

LEGAL PROGRESS IN THE CONDITIONS OF TRANSITION STATE: HISTORICAL AND LAW-CULTURAL MEASUREMENT

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ABSTRACT

The article examines the essential aspects of legal progress in a transitional state in particular. The author identifies and reveals the features of legal progress in the context of political, legal and social instability, when various kinds of institutional transformations, perceptions, changes in the content and principles of the legal regulation mechanism arise and go through the national state and legal space. The paper draws attention to the theoretical feasibility and practical significance of a rigorous analysis of the nature of legal progress, highlighting its criteria in a typologically uncertain legal system, in conditions of a transitional state, which, for example, is important for understanding and evaluating the course of reforms in Russia at the turn of the XX-XXI centuries.

Keywords: legal progress, transitional state, criteria of legal progress, transitional legal system, conservatism, liberalism, formation theory, legal institution, legal order, legality, political and legal tradition, expediency, civil society.

1.INTRODUCTION

The category of “legal progress” is one of the most significant concepts of modern jurisprudence, since it is precisely this that makes it possible to determine both the

content and the vector of development of any national legal system. Without a clear understanding of legal progress in general and its criteria, in particular, it is impossible to define, or rather, assess the level of achievements in legal and state-building, especially when it comes to serious transformations in the legal and political-institutional sphere, which, of course, peculiar to all sorts of reforms and, especially, revolutions. In this regard, understanding the progressive model of the development of law is not, as they say, a tribute to a certain “cognitive mode”, but it has very serious pragmatic foundations and, of course, practical significance. Quite often, reformers or revolutionaries who came to power in a given state are looking for a way out of the difficult situation that has arisen in quickly borrowing, receiving foreign law, and ways of organizing power institutions, believing that it is in this way, namely by copying even a positive foreign government legal experience, through “pushing” it into the legal space of a particular nation, a quick and “progressive” version of updating the legal and political system is possible. In this regard, the formulation of criteria for legal progress and its basic principles can become, as it were, a critical foundation for mechanical and rapid legal and political borrowings.

2.METHODS

The work of Alain de Benoit, A.L. is of no interest in forming the methodology for his study of legal progress in the context of political and legal instability. Alferova, A.S. Akhiezer, G.G. Dili-genskogo, A.G. Dugin, E. Durkheim, V.V. Ilna, N.I. Kareeva, J.A. Condorcet, O. Comte, P.L. Lavrova, N.N. Nikulin, A.S. Panarina, V.M. Rosina, M.I. Rostovtsev, A. Saint-Simon, G. Spencer I.T. Frolova, S. Huntington, Yu.A. Yudina, S.N. Yuzhakova and others On the basis of philosophical and methodological generalizations made by these and other authors, legal progress is investigated within the framework of dialectical and hermeneutic methods, which act as universal methods of cognition. In addition, the study of the nature of legal progress involves the use of comparative legal and comparative historical methods, allowing to reveal its doctrinal, substantive foundations in a wide legal cultural field: domestic and western.

3.RESULTS AND DISCUSSION

Understanding the nature, criteria, basic principles of legal progress is the “eternal” problem of legal science of the most diverse in their key characteristics and characteristics of the development of states. Even as a first approximation to the political and legal heritage of different eras and nations, one can see an obvious interest in this topic. Works of Plato, Aristotle, Cicero, Aurelius Augustine, G. Grotius, J. Locke, I. Kant, G.W.F. Hegel, K. Marx and others are a clear confirmation of this. And in the works of later researchers (A. Kojeva, F. Fukuyama, K. Jaspers, and others) the problem of socio-historical progress in general and legal progress in particular is posed and solved from various theoretical, methodological, philosophical, and ideological positions. It is not surprising, therefore, that even today the appeal to various manifestations of legal progress very often appears both in studies of the corresponding orientation (Zakhartsev & Salnikov, 2015; Azizova & Yagiyev, 2016) and in works not directly dedicated to this (Mordovtsev & Mamychev, 2016; Apolsky & Pleshkov, 2015; Pleshkov & Apolsky, 2013; Lyubashits et al., 2015). In the domestic spiritual-legal and political-legal tradition, the question of legal progress was raised by the Metropolitan of Kiev Hilarion

in the 11th century. ("The Word of the Law and Grace") and was later developed by Vladimir Monomakh ("Teaching Children"). Both of these authors, belonging to the ancient Russian intellectual tradition, viewed the progressive development of law and law from spiritual and religious positions, as well as in the context of a clear understanding of the nature of Russian statehood, its content, and also taking place in the XI-XII centuries. risk factors of both external and internal nature. Actually, Monomakh, "as well as Hilarion, was interested in the amount of authority of the Grand Duke permissible in the Russian political and legal field and the nature of their implementation, the form of organization of state power, the sum of moral criteria that determine the assessment of the head of a Christian state, relations with subordinate people and vassal princes. He did not ignore the problems associated with the administration of justice and punitive policies" (Isaev & Zolotukhina, 2003). By and large, the provisions noted here can be viewed as criteria for legal (or political-legal) progress, of course, regarding the specifics of ancient Russian statehood, although a number of them have not lost their relevance at the present time. Further, of course, different aspects of the problem of legal progress, its various criteria can be found in the history of domestic legal and political studies and in other eras. Moreover, of particular interest here are the ideas of those authors who created and thought at the crucial moments for the national state-legal being moments, i.e. under conditions of various kinds of Distemper, splits, which naturally led to the disorientation of the power elites, various deformations of their legal consciousness, metamorphoses of personal and mass legal culture, often very rapid degradation of the most important legal and political institutions, etc. In this regard, in Russian history, such tremors, which often led to the creation of a typologically indefinite state and the corresponding legal system, should include: "Time of Troubles" of the turn of the 16th-17th centuries, church schism of the mid-17th century. (the first experience of the westernization of national spiritual life), Peter's reforms of the first quarter of the XVIII century. (the first experience of the westernization of national legal and political life) and their logical continuation during the period of the Great Reforms of Alexander II (an attempt was made to modernize both the legal and political life of Russia in the Western liberal spirit, while maintaining the absolute monarchy of the "Peter sample"), Soviet "turning point", which can be evaluated as a kind of expected "Answer" to nearly two hundred years of "pushing" into the fabric of the national culture of Western legal, political, social and other institutions, ideas, concepts, models development, which created as a result a fundamentally different state-legal and ideological field, which was also considered, of course, "progressive", although for some reason it collapsed very quickly in the early 90s of the 20th century, which led to the second experience of the westernization of national statehood continuing (with one or another course adjustment) to the present day. Appealing to both domestic and foreign law and state history, highlighting different approaches to periodization of epochs and periods, different in their goals and epistemological attitudes, does not remove, but only, on the contrary, more and more aggravates the issue of legal progress as immanent, always taking place characteristics of historical development. Here, in general, two main approaches can be distinguished:

1) the movement from one type of law and the state is always progressive, it is always a "upward" movement (formation theory, some liberal models of historical development) and it cannot be otherwise;

2) the development of national and international legal and political institutions is not at all subject to the strict logic of "progressism", since is more complex,

multifactorial, and therefore polyvariative, i.e. transition from one epoch of state and legal life, it will not always be progressive even in general terms: approximation of the mechanism of legal regulation to the priority interests of the individual and society. Currently, this approach is implemented, for example, V.N. Sinyukov in the proposed periodization of the Russian legal system on the basis of “the leading style parameters of the main right-cultural epochs forming the legal history of Russia”. “Such an approach to the periodization of the Russian legal system allows us to avoid the traditional logic of gradual progress as a kind of formula for “ascending” development of law, where the starting point of the movement is a kind of “undeveloped”, “bad” law, “improving” only in a “progressive” perspective” (Sinyukov, 2010). On the contrary, a judgment like “the basic general civilizational pattern of the development of social relations is a progressive movement towards ever greater freedom and equality of an increasing number of people, involving representatives of all sectors and groups of society in this process” (Theory of Law and the State, 1996), it seems to be all the same declarative in nature and is hardly of any scientific interest and heuristic value. In general, it is also clear that such a heuristic situation, associated with the need to understand the essence and criteria of legal progress at the present time, of course, is not accidental: without determining the content of “progressiveness” and, conversely, “regressivity” in national legal life, simply It is impossible to assess the current state of its development, to evaluate possible prospects, and therefore all legal (including constitutional, other sectoral) reforms go in the “dark”, through the “trial and error” method, without any strategy that its about Before directly influences the choice of adequate regulatory instruments of their conduct, the wording of the objectives and tasks, the vision of the possible outcomes and that, perhaps most importantly, the evaluation of their usefulness (appropriate) for a particular society at a particular historical period of development. The latter, in fact, determines the level of legitimization of national law, those changes that take place during the transitional period of statehood development and in one way or another determine its “face”, those processes that take place at this difficult time for any state and society. The situation here, as a rule, is quite unambiguous: either society supports legal reforms and the reformers themselves, considering them progressive, or all changes in the legal system are rejected by society, the majority of the population as “alien” (which, for example, the country experienced during the reign of Boris Godunov and Basil Shuisky, in the era of Peter's reforms, reforms of Alexander II, in the 90s of the twentieth century.). In the second case, a crisis of legitimacy of legislation (positive law) arises, which means a catastrophic decline in the authority of state institutions, which quickly leads either to significant deformations of the national political, legal and spiritual field, when the “legal consciousness of the Time of Troubles” (“Grows turbid,” for example, from mechanical reforms of Peter the Great, etc., or, in general, to the collapse of statehood (all of which is also “Time of Troubles” of Russia at the turn of the 16th-17th centuries), the disintegration of the previously very strong political and political organism. What are the criteria for legal progress at such moments of history? Will they coincide with its main indicators in the stable period of the functioning of national law and the state? The significance of these issues in theoretical and practical terms is difficult to overestimate. To answer them, it is necessary, of course, to present the existing models of understanding the nature of a transitional state, formulate an explicit definition of legal progress and highlight its criteria in a typologically defined, stable state-legal and political space and of course the conditions of transitional statehood (the term “statehood” is considered here in a broad

context, i.e., as an aggregate, including the state itself, as well as the legal system, economic system, social organization, religious and cultural structures (Morozova, 1998; Morozova, 1985; Law in the medieval world, 2001). It should be borne in mind that a kind of law, like political and institutions can not be isolated from other elements of the culture of society, moreover, they seem to be “dissolved” in various extra-legal social structures, which, in particular, noted, G. Meng, pointing out that the ancient freedoms of the laws of the Romans, Greeks and Hindus both in the East and in the West “mixed religious, civil and just moral precepts without the slightest attention to their essence” (Morozova, 1985; Lyubashits & Razuvayev, 2018; Mordovtsev et al, 2018; Repnikov, 2007; Menshikov et al., 1902; Kudryavtsev, 2002). The right cultural (or “legal and stylistic”) measurement of the national legal system makes it possible to identify the nature and peculiarities of the process of socialization of positive law, its actual legitimacy, the specifics of including legal forms both in a stable political and legal organism, and in its antipode - the state and the law of transition. type, i.e. identify and thoroughly study those socio-cultural by virtue of which the law in the course of its “positive” (gaining its own formal legal attribute with the help of power institutions), in the eyes of the majority of citizens, loses its positive-creative potential, social orientation, etc. Let us single out the two main theoretical and methodological approaches that have emerged in the Russian legal discourse to address the issue of transitional statehood:

1) a progressive vector of intellectual understanding of the problems of transitivity, in which the transition from one type of law and state to another is always the result of the gradual “growth” of certain “progressive” legal, political, social, economic trends leading to qualitative, positive changes in a particular political - right field. This solution to the problem of transitivity basically formed in the formational measurement of development and the essence of law and the state and in Russia it was developed in the works of G.V. Plekhanov, V.I. Lenin (especially the last author), who, developing and, in many ways, strengthening the Marxist dialectical materialist position in the social sphere, both theoretically and empirically tried to justify the exclusively progressive character of the next level (formation) in the socio-economic, and therefore in political and legal evolution of society. Here, the scientific and theoretical positions of these researchers on the content and direction of the transitional political and legal period are very closely intertwined with their ideological and (for example, in relation to VI Lenin) even practical interests and aspirations. Although, if one looks carefully at the process of development of law and state in Western Europe, it is hardly possible to deny the existence of progressive trends, in particular, during the transition from the feudal type of law to the bourgeois right, in which, in particular, many redundant rational organization of national legal space legal institutions and rituals. So, for example, the French ritual of “removing from the gallows” as a way of “correcting” a judicial error in the late European Middle Ages, is gone, the procedure of the “sacred oath” has disappeared, which served as a guarantee for entering into public and private contracts (Law in the medieval world, 2001), on the contrary, During the century, the principle of legal equality of the parties, a stateless court, an institution of jurors, etc., are bourgeois in substance and content. The latter, among other things, are also a kind of indicators th society into civil society” (Lyubashits & Razuvayev, 2018).

2) the sociocultural measurement of the state and rights of the transitional type, of course, has broader theoretical, methodological, historical and doctrinal foundations than the progressive model, since arises, in essence, in the course of the centuries-old

evolution of domestic political and legal thought, acquires various forms of understanding the “intertype” political and legal reality, but excludes the absolutization of its “progressive” nature, assuming to use the adequate understanding of the essence, content, efficiency and direction of the typological movements of the national state and the rights are diverse, including the spiritual-moral criteria. Here one can single out the views of the Slavophiles and the positions of their ideological opponents of the Westernizers; consider liberal and conservative state-legal doctrines (for example, the works of K.P. Pobedonostsev, M.N. Katkov, L. Tikhomirov, and others) are of interest, it may be worthwhile to dwell on the Eurasian concept (N.S., Trubetskoy, N.N. Alekseev and others.)

As the author’s (working) definition of legal progress, let’s take the following: “Legal progress is the process and result of the development of the national legal system that meets the expectations of the majority of the population of the state, the most important interests of citizens (subjects) specific historical period and the content of a politico-legal (right-cultural) paradigm that is stable for a given society” (Mordovtsev et al, 2018).

The heuristic value of this kind of definition also seems to be based on the fact that two fundamental models of legal progress, conservative and liberal, can be distinguished on its basis, the identification and thorough analysis of which is extremely important for the state and the transitional legal system.

A.N. Guriev in one of the publications of the early twentieth century. noted that “conservatism is not opposed to progress - it requires only a different method of its implementation” 9 Repnikov, 2007). M.O. Menshikov believed that state legal progress presupposes an evolutionary path of development and he is always opposed by a radical, revolutionary project of political and legal transformation, since “progress in the noble understanding of the word is healthy development — hence, a radical break of the state and everyday life is not progress. All living things grow very slowly. These organs are not created by the command of the transducers. Only that is progressive, what is vital and what gives the greatest amount of good. Evolution in nature generally proceeds in a spontaneous, not catastrophic way: we are extremely cautious about the conditions and their slow synthesis” 9 Menshikov et al., 1902).

The liberal model of legal progress, of course, more familiar to the prevailing over the past two hundred years in Europe and over the past thirty years in Russia, involves, first of all, the reception of samples of Western law and political institutions, their “pushing” the national state-legal reality from the relevant power elites, and therefore the loss of their own political, legal and socio-legal identity, the loss of basic mental, ideological, archetypical foundations.

In the conditions of “liberalization” of legal and political relations as a strategy of transitional law and a state in a non-Western sociocultural space, there is often a “discrepancy” between the introduced (new) legal and political institutions, principles, doctrines, values and legal expectations of the majority of the country’s population, i.e. the processes of delegitimizing the national legal system are possible and, moreover, real and tangible, leading to such deformations as an increase in corruption (for example, F. Tyutchev compared Peter’s reforms of the first quarter of the 18-th century to one “big criminal case”), unprecedented growth everyday crime, including crimes committed by parents against their minor children, which is very significant in the context of the rejection of alien legal foundations, is an indicator of disrespect and law, and the law, the entire system of legal order and security of the individual and society.

The conclusion here is simple: the former morphology of the legal order and (wider) legal space could provide a certain level of compliance with the laws and adherence to positive legal values, principles of legal ideology, while new, borrowed institutions and structures are rejected and therefore cannot be an effective means of stabilization. Moreover, the effective development of a wide range of social relations and ties. And the speed with which these legal-political receptions go, the desire of the authorities to implement them as soon as possible does not contribute to their qualitative “assimilation” in the conditions of the qualitative uncertainty of the national legal system, its intertype state.

Therefore, for example, in post-Soviet Russia, the provision on the “unconditionally progressive” character of everything “western-universal”, “internationally recognized”, etc. for more than twenty years now it does not hold water, since requires a balanced and thorough study.

So, V.N. Kudryavtsev singled out a factor that undoubtedly influences the perception and, therefore, the functioning of borrowed legal institutions, norms and procedures in the Russian Federation. He believes that “one of the reasons ... it can be assumed is the state of the general and political culture of the population, in particular, its element such as readiness for new things, for decisive and uncompromising changes. Do we have such readiness?” (Kudryavtsev, 2002). Kudryavtsev believes that “rather, it is only being created. We do a lot of unreasoned and incomplete” (Kudryavtsev, 2002).

4.CONCLUSIONS

However, the truth lies somewhere in the “intersection” of these two (extreme) models of legal progress, which, therefore, should be reflected in the criteria for the legal progress of the transition period:

1) the ability of the legal system to minimize social conflicts and tensions, which is associated with the importance of resolving serious conflicts between supporters of different political and economic interests;

2) preservation of the regulatory and security balance between the former, still preserving own legal institutions and norms, and the rights of the law and legislation belonging to other legal structures;

3) the preservation of the regime of legality and the prevention of its substitution by the principle of expediency due to at least the absence of clear ideas about the content of the latter in the chaotic social field (here you can recall, for example, No. 323 - FL “On the basis of public health protection in the Russian Federation” from 21.11.2011, which, under the “cover” of some social (progressive) “expediency”, legalizes surrogate motherhood and establishes a market mechanism of transplantology);

4) ensuring relative lawlessness of legislation as a factor in the effectiveness of the operation of law in the context of political-legal and socio-economic instability.

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