

Constitutional and legal expression of the principle of ideological diversity in legislation related to public associations and political parties

Expresión constitucional y legal del principio de diversidad ideológica en la legislación relacionada con asociaciones públicas y partidos políticos

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ABSTRACT

The aim of this study is to carry out a comprehensive study of theoretical research and the practice of implementing the constitutional and legal principle of ideological diversity in the activities of public associations and political parties, and to develop recommendations and proposals for improving legal regulation in this area. According to the results of the research, the conclusions were made that the implementation of the constitutional principle of ideological diversity is one of the conditions for the development of any democratic state based on the rule of law. In the Russian Federation, conditions have been created at the legislative level for the development of the constitutional principle of ideological diversity. The legislation related to the public associations and political parties plays an important role in the implementation of this constitutional principle, but the mechanisms for its implementation still need to be improved.

Keywords: Ideological diversity, constitutional principle, political pluralism.

RESUMEN

El objetivo de este estudio es llevar a cabo un estudio exhaustivo de la investigación teórica y la práctica de implementar el principio constitucional y legal de la diversidad ideológica en las actividades de asociaciones públicas y partidos políticos, y desarrollar recomendaciones y propuestas para mejorar la regulación legal en esta zona. Según los resultados de la investigación, se llegó a la conclusión de que la implementación del principio constitucional de la diversidad ideológica es una de las condiciones para el desarrollo de cualquier estado democrático basado en el estado de derecho. En la Federación de Rusia, se han creado condiciones a nivel legislativo para el desarrollo del principio constitucional de la diversidad ideológica. La legislación relacionada con las asociaciones públicas y los partidos políticos juega un papel importante en la implementación de este principio constitucional, pero los mecanismos para su implementación aún deben mejorarse.

Palabras clave: diversidad ideológica, principio constitucional, pluralismo político.

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INTRODUCTION

In accordance with the Constitution of the Russian Federation of December 12, 1993 on the territory of the Russian state ideological diversity is provided. Moreover, it is declared as one of the significant foundations of the constitutional order. As follows from Article 13 of the Constitution of the Russian Federation, the possibility of existence of the state or mandatory ideology is excluded in the Russian Federation. The key question in determining the meaning of ideological diversity in a democratic state is, first of all, to clarify the essence and phenomenon of ideology. In this regard, the constitutional principle of ideological diversity, its content and essence, as well as its expression in the legislation on public associations and political parties is of scientific interest.

Research ideas in the framework of this work are complicated by the fact that in the domestic jurisprudence there is no unambiguous definition of the constitutional principle of ideological diversity. Thus, in modern legal science, ideological diversity is most often understood as “the state of public life based on the recognition of the individual’s ideological freedom and integrity and representing an equal competition of ideological concepts in society” (Kononov, 2009). However, there are a number of other approaches to understanding this principle, since the principle itself is multidimensional. In the review, V.V. In the review of B.S. Krylov’s monograph on the problem of the influence of ideology on society and the state, there is a lack of recent works devoted to the essence, forms of manifestation and significance of the ideology of the state and society (people) (Nevinskiy, 2013). In general, there is a lack of scientific developments on the problems of constitutional and legal regulation of ideological diversity in Russia.

Besides, the urgency of the given research is explained also by the fact that the constitutional legislation in the given sphere is very dynamically and diverse, and the accepted legal positions of the Constitutional Court of the Russian Federation help to understand the essence of a constitutional principle of ideological variety and to define the further vector of its development in the Russian state. In this connection, the research carried out is relevant and timely.

Aims and objectives

The purpose of research is complex studying of a constitutional principle of ideological variety in Russia, its expression in the current legislation on public associations and political parties, working out of recommendations and offers on perfection of legal regulation of the given sphere. To achieve the goal, the following tasks have been defined: to consider the constitutional-legal nature and content of the principle of ideological diversity through the prism of the legislation on public associations and political parties, to determine the expression of the constitutional principle of ideological diversity, to study the implementation of the constitutional principle of ideological diversity and its role in the development of the party system in Russia, to develop proposals to improve the constitutional-legal regulation of the principle of ideological diversity.

Methods and materials

Achievement of the goal and objectives of the study was carried out with the help of general scientific and private methods of cognition. Such methods of scientific cognition as analysis (used in the study of normative legal acts and legal positions of the Constitutional Court of the Russian Federation on the topic of research), synthesis (found application in the consideration of theoretical sources and their generalization), comparative legal method (used in the study and comparison of legal norms), logical (used in the study of the peculiarities of the object of research), system-structural (used as a means of cognition of the constitutional principle of ideological diversity in Russia) were used in the work.

DEVELOPMENT

Results and discussion

The principle of ideological diversity is considered by many Russian researchers in their scientific works. Thus, for example, K.A. Kononov notes that in the Russian science of constitutional law the problem of understanding the phenomenon of “ideological diversity” remains debatable. A stumbling block in this discussion is the question of the correlation between ideological diversity and other “types” of pluralism, primarily political pluralism. According to these authors, the circle and system of social relations that make up the content of ideological diversity are presented differently. To date, it can be argued that two approaches have emerged. The essence of the first approach is to consider the content of ideological pluralism as a part of political diversity, while some authors identify them. It can be conventionally defined as a “narrow” approach. In another approach, ideological diversity is considered as a broader education that encompasses social relations not only in the political sphere. It is proposed to call it a “broad” approach.

Ideological diversity is also a subject of research by foreign authors M. Duvergé, J. Izensee, P. Kirchhoff. Various approaches are expressed by them with regard to pluralism (Craig, 1998), the role of constitutions operating within political and ideological diversity (Raz, 1998; Tushnet, 2012; Jacobsohn, 2012; The Role..., 1990; Geertz), the role of modern political parties and political institutions (Newmann, 1989; Weingast, 1995; Mair, 1997; Katz, Mair, 1995).

The analysis of the approaches stated in science allows us to conclude that the relations of ideological diversity from the constitutional-legal point of view take place in the political, economic, religious and socio-cultural spheres of public life, manifesting themselves as complex relations. Ideological diversity, being present in all these spheres, forms some common for all these “types” of pluralism rule, according to which the legal regulation in each specific sphere is carried out. It is ideological pluralism that constitutes the initial general model for the constitution of separate spheres of social relations on a pluralistic basis. The manifestations of ideological diversity in the political, economic, religious and socio-cultural spheres are proposed to be referred to as special cases of ideological diversity (Lobanova, 2012). Relationships of ideological diversity are an exclusive subject of constitutional and legal regulation, because they are directly or indirectly

connected with relations in the sphere of public power.

Particular attention should be paid to the position of O.V. Martyshin, who calls part 2 of Article 13 of the Constitution of the Russian Federation “architectural excess”, because “ideological pluralism” is also a kind of ideology (Martyshin, 2009).

In the opinion of E.S. Yusubov, researchers in general have come to understand that the Constitution of the Russian Federation has its own ideology (Yusubov, 2013). S.A. Avakyan emphasizes that almost every word of the Constitution, all the institutions enshrined in it express the vision of the desired social and political system of the country (Avakian, 2010). According to the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin, it is the multiplicity of constituent elements of society that forms the basis of ideological and political pluralism (Commentary, 2009).

The monist vision of society and the realization of this vision in the form of the establishment of a particular ideology as a state or obligatory ideology or in its political system initially bear the seeds of denial and future destruction, because they require the presence of an external regulator to the society itself, capable of working without mistakes and failures. Pluralism, which is a part of the internal mechanism of self-regulation and self-development of society, is more consistent with the diverse reality, which, in turn, is a condition for the evolutionary development of society and determines the limits of state governance of society.

From the point of view of S.A. Avagyan, the principle of ideological diversity enshrined in the Constitution of the Russian Federation means not only the recognition of different ideologies, but only those that do not contradict the constitutional norms. That is, the ideological content laid down in the Constitution of the Russian Federation is the most general one, reflecting “a certain sum of values developed by mankind, rationally reflecting both the interests of the individual and its needs, including the socio-political ones”, and the social groups and political parties existing in the country can profess only that ideology that fits into the constitutional model, does not contradict it. Only if this condition is met can consent be achieved in society (Avagyan, 2009).

The modern domestic constitutionalist B.S. Krylov sees the problem more globally, not only within the framework of constitutional law. He focuses on political ideology on domestic relations, organization of power institutions, interaction of public authorities and citizens. The author is convinced that one should not underestimate the importance of ideology and its impact on society in the modern world, because conflicts arise between the ideology of the main political parties and the activities of the state apparatus, on the one hand, and the political ideology of the main part of the population, which includes voters of representative bodies of the state, on the other hand. The scientific assessment of ideology is important because the knowledge of the ideology of society is necessary to determine the prospects for its development (Krylov, 2011).

Thus, the effective implementation of Art. 13 of the Constitution of the Russian Federation, which enshrines the principle of ideological diversity, in conjunction with other basic principles not only guarantees a number of constitutional rights and freedoms, but also contributes to the achievement of a high level of legal culture of Russian citizens, contributing to the further development of democratic institutions of modern Russia. That is why it is particularly important to define the peculiarities of the expression of the principle of ideological diversity in the sphere of legislation on public associations of modern Russia.

Along with the political parties, the main subject of implementation of the norms fixing the principle of ideological diversity, are public associations. The principle of ideological diversity in the Russian Federation is expressed both in special legislation and in the activities of public associations. According to Art. 5 of the Federal Law of May 19, 1995, No. 82-FZ “On Public Associations”, the public association is understood as a voluntary, self-governing, non-commercial formation, created at the initiative of citizens who have united on the basis of the community of interests for the implementation of common goals specified in the statute of public association (About..., 1995). The federal legislator allows legal possibilities to create a public association from several organizational and legal forms. Such forms may include public organization. It is characteristic, first of all, for a political party and a political organization, while the second form is a social movement, which is more typical for social and political movements.

According to the federal legislation, the public organization is understood as a public association based on membership, created on the basis of joint activity for protection of common interests and achievement of statutory goals of citizens who have united. Members of the public organization in accordance with its charter can be individuals and legal entities - public associations, unless otherwise established by law.

But the public movement is a mass public association consisting of participants and not having membership, pursuing social, political and other socially useful goals supported by the participants of the public movement (Filimonov, 2011). The supreme governing body of the public movement is the congress (conference) or general assembly. The permanently functioning governing body of the public movement is an elected collegial body accountable to the congress (conference) or general assembly.

To clarify the question let's address to definition of the Constitutional Court of the Russian Federation from July, 6th, 2010 № 935-O-O-O in which it is underlined that the principle of political variety (part 3 of article 13 of the Constitution of the Russian Federation) is realised in the Russian Federation not only through multi-party system, creation and activity of parties of a various ideological orientation. Public associations that are not political parties

are also legally endowed with a number of rights to participate in the political life of society, including in elections to public authorities. Besides, according to the current legislation, the applicant having the status of the all-Russian public movement, has the right to transform himself into a political party at performance of the requirements shown by the federal legislator to political parties (items 1, 4 and 5 of article 11 of the Federal law “About political parties”) (Determination, 2010). Proceeding from this position of the constitutional justice body, it follows that the right of citizens to associate includes the right to form on a voluntary basis public associations to protect common interests and achieve common goals.

In addition, the legislator has also provided for the right to join or refrain from joining existing public associations, as well as the right to freely withdraw from public associations. As follows from the ruling of the Constitutional Court of the Russian Federation of February 17, 2015, No. 2-P, the right of everyone to associate, as it is defined by the Constitution of the Russian Federation, is ensured by the recognition by the state of wide autonomy of public associations serving as a form of self-organization within the framework of civil society, and the creation of real opportunities for citizens to achieve by their own and joint efforts through legal means of implementation of socio-economic, political, cultural, scientific, environmental and other programs initiated by them. Public associations, whose freedom of activity and equality before the law are guaranteed by the Constitution of the Russian Federation, independently choose the forms and methods of implementation of the set tasks, and public authorities, designed to assist in the self-organization of citizens, have no right to arbitrarily restrict the activities of public associations and interfere in their affairs, including with regard to the assessment of the feasibility of the directions and content of such activities (Resolution, 2015).

At the same time, as indicated by the Constitutional Court of the Russian Federation in its rulings No. 247-O-O-O dated February 5, 2009 and No. 155-O-O dated January 26, 2010, the obligation to comply with the Constitution of the Russian Federation and the laws established by Part I of the RF Law on Public Associations and the Law on Public Associations (Resolution, 2015). Article 15, paragraph 2, of the Constitution of the Russian Federation fully applies to citizens' associations. Therefore, their formation and functioning should be legal in nature and meet the requirements arising from the Constitution of the Russian Federation - as from its special prescriptions that determine the objective limits of the normative content of the right to association, including a ban on the creation and activities of public associations, the purposes or actions of which are aimed at forcible change of the foundations of the constitutional order and violation of the integrity of the Russian Federation, undermining the security of the state, the creation of armed formations, fomenting social.

The analysis of federal legislation shows that the principle of ideological diversity in the current legislation on public associations has been fully reflected in the diversity of civil society structures. This makes it possible to assert that the interests and needs of members of Russian civil society are reflected. The system of public associations that has developed in the Russian Federation is a diverse set of goals, tasks, composition, forms and structure, the presence of which makes it possible to fully implement the constitutional right to association.

At the same time, the observed increase in the volume of legislative regulation of relations in the sphere of public associations does not contribute to the “transparency” of relations between public authorities and citizens' associations in all respects, and also strengthens the requirements to various aspects of their activities. The existing procedure of registration of public associations is complex and multi-stage. At the same time, it is regulated by several normative acts. It is necessary to adjust the legal mechanism of control and procedure of assigning responsibility measures to public associations (About, 2014).

Reflection of the principle of ideological diversity is also realized in the regional legislation on public associations. In this regard, it is valid in the version of 2014. The Law of Altai Krai “On State Support of Youth and Children's Public Associations in Altai Krai”. This Law defines guarantees, general principles, content and measures of state support of youth and children's public associations in Altai Krai. The state support of youth and children's associations means a set of measures taken by the state authorities of Altai Krai independently or jointly with the state authorities of the Russian Federation or local authorities in accordance with the legislation of the Russian Federation in the field of state youth policy in order to create and provide legal, economic and organizational conditions, guarantees and incentives for the activities of such associations aimed at the social mills.

Political parties are intended to perform a worldview and ideological function, their role is great in the process of mediation between civil society and the state, as they scientifically generalize, systematize, justify, formalize the interests of the population in the form of statements, political programs, doctrines and bring them to power. Ultimately, the representatives of the parties that won the elections, having come into power, make efforts to implement party programs in the course of legislative activity, initiating draft laws (Yerigina, 2013). The very question of investigating the principle of ideological diversity in relation to the principle of multiparty politics in domestic legal science is not new. However, this relationship is often reduced to the identification of these principles. It seems to be the most adequate position of A.S. Frolov, who, referring to the position of the Constitutional Court of the Russian Federation, comes to the conclusion that the principle of ideological diversity, along with the principle of multi-partyism, serves as a guarantee of freedom of creation and activity of political parties, the presence of which is necessary for the proper functioning of representative democracy in the Russian Federation (Frolov, 2011).

According to V.A. Lebedev, the discussion of the problems of ideological diversity and multi-partyism through the prism of the criteria of a modern democratic state presupposes the answer to the question about the democracy of the Russian party system. From the very fact of fixation in part 3 of article 13 of the Constitution of the Russian

Federation of ideological variety and multiparty system the aspiration to creation of such political parties which would represent various social groups and would allow to speak about democracy of a political system as a whole is clear. One can agree with the modern researcher that multiparty politics is necessary, first of all, for the state. If the party system is ineffective, the emergence and deepening of contradictions between society and the state are inevitable, and this, in turn, can jeopardize the very existence of state institutions (Lebedev, 2010).

V.V. Nevinsky, believing that political parties are the main agents of various modern ideological trends that fill the vectors and content of the state mechanism functioning (Nevinskiy, 2013). It is the state that can reform the legal status of political parties. But in accordance with the norms of the Constitution of the Russian Federation, the state in Russia has no right to regulate the number of parties, but it is obliged to guarantee the possibility of creating parties and their activities. The order of creation of political parties, financing by the state of their activity in election campaigns is established by the law of the Russian Federation. At the same time, state bodies have no right to interfere in the internal life of political parties.

Expressing the political will of their members, parties participate in the formation of bodies of state power and administration and exercise power through their representatives, who are elected to legislative and other representative bodies of power. Under federal law, political parties are obliged to report annually on their income. They are not entitled to financial or other material assistance from foreign citizens, States or organizations.

Political parties have the right to nominate candidates for deputies and other elected positions, including a single list, to carry out election campaigning, and to form factions of their supporters in representative bodies. Equality of public associations before the law is manifested in the equality of requirements to them by the state.

The constituent entities of the Federation regulate the principle of multiparty participation, as a rule, in the basic laws of these entities. Thus, in the Altai Krai, the implementation of ideological diversity through, among other things, multi-party system is regulated by Article 14 of the Charter of the Altai Krai dated June 5, 1995, No. 3-3C.

In accordance with paragraph 3 of Article 14 of the Charter of Altai Krai it is determined that the citizens of the Russian Federation in the territory of Altai Krai are guaranteed freedom of formation of political parties, economic, cultural, religious and other public associations, trade unions, movements, organization and activities of which are carried out on the basis of federal laws. Foreign citizens and stateless persons in Altai Krai can take part in the activities of public associations in accordance with the federal law (Charter, 1999). Also in Altai Krai operates a special law of Altai Krai from 13 July 2010 N69- “On guarantees of equality of political parties represented in the Altai Krai Legislative Assembly, when covering their activities by regional television and radio channels” (About, 2013). This makes it possible to implement the principle of ideological diversity, which is most fully expressed in the multiparty system and enshrined in the legislation on political parties.

However, everything is not so simple, since it is not correct to reduce multiparty politics only to the presence of several parties. By the way, as of May 2015, according to official data of the Ministry of Justice of the Russian Federation, seventy-six parties were operating in Russia. It would seem that this circumstance can be considered an indicator of the fruitful implementation of the norms regulating relations in the sphere of political parties' activities. However, it is necessary to agree with V.A. Lebedev that the development and strengthening of the constitutional basis for the organization and activities of various political parties in our country should serve, above all, as an obstacle to the establishment of the domination of power by one party or one person, with the elevation of its own ideology to the rank of a mandatory, non-alternative one. At the same time, when reforming and improving the legal status of parties, the state should bear in mind that multiparty politics is not limited to the presence of several registered political parties.

I.V. Mikhailenko's proposals in this regard are interesting. The modern researcher supposes that in order to guarantee the implementation of the constitutional principles of ideological diversity and multi-party system, as the conditions for the development of the Russian party system, it is objectively necessary, firstly, to continue the positive direction of legislative changes in electoral legal relations, which contribute to the constitutional principle of ideological and political diversity (Mikhailenko, 2011). As it seems to us, it is necessary to add that one of the most significant flaws of the Russian party system is the presence of a dominant party, including representatives of the legislative and executive branches of power. And all this in the absence of opposition. The consequence of this situation is the numerical superiority of any one party in parliament. Thus, the implementation of the principle of ideological diversity in the Russian Federation through multiparty politics is complicated by the lack of legislative regulation of the distribution of deputy mandates. As of today, we can agree with I.V. Mikhailenko's proposal on the need to amend the legislation on the formation of the Russian parliament, which should establish legal obstacles to the formation of parliamentary factions of more than 226 people (Mikhailenko, 2011).

It seems obvious that Federal Law No. 20-FZ of 22 February 2014 “On the Election of Deputies to the State Duma of the Federal Assembly of the Russian Federation” (On the Election, 2014), favours large “strong” parties at the expense of “small” ones, doomed to underrepresentation. According to N.V. Bobrakova's fair conclusions, unfavorable conditions for legislative regulation of the political opposition are formed in our country. Thus, one should not forget about the legacy of the past: the lack of long-term experience of multiparty politics, civilized political struggle (Bobrakova, 2013). From the point of view of practical recommendations, it seems to us that it is necessary to adopt special legislation in the Russian Federation regulating opposition activity. It is noteworthy that

certain countries, such as England and the United States of America, are known for their experience in legalizing the institution of opposition. Russia has repeatedly attempted to introduce opposition activities into the legal field, but the draft law was rejected by the President of the Russian Federation (On legal, 2019).

At the same time, it is impossible to absolutize and idealize the institution of the opposition in the implementation of ideological diversity. This can also lead to unfavorable consequences. Let's agree that the opposition should not be given a legal status and, all the more so, should try to consolidate it legislatively, it is only necessary to expand and regulate the mechanisms of opposition activity as one of the forms of realization of the right to ideological diversity. In this vein, the position of S.V. Vasilieva that the opposition endowed with a special constitutional-legal status limits the principle of political diversity and multi-partyism is interesting (Vasilieva, 2009). Moreover, a positive role of constitutional-legal regulation of opposition activity will be achieved, if we do not perceive the formula "opposition against the authorities". According to K.A. Kononov, "the opposition cannot be treated as a subject opposing the ruling one, rather as a subject participating in the exercise of power, offering alternative solutions and controlling" (Kononov, 2011). In addition, it should be taken into account that being an opposition is always relative.

CONCLUSIONS

First, a significant role in the implementation of the constitutional principle of ideological diversity in Russia is played by the legislation on political parties and public associations, which nowadays expresses this principle in a succinct manner, which, in turn, allows us to assert that it is possible to implement the norms of law in the field of ideological diversity through public associations and political parties.

Secondly, despite the existence of federal and regional legislation in the area of public relations under study, it needs to be further improved. It is necessary to consistently transform the legal and regulatory framework governing the creation and activities of political parties in the direction of changes in electoral legal relations, legislative regulation of the method of distribution of deputy mandates, as well as regulation of the legal mechanism of opposition activity, in order to expand the limits of comprehensive state-legal implementation of ideological diversity in the Russian Federation

Third, making a general conclusion, we should note that the all-round expression of the content of the constitutional principle of ideological diversity is connected with the complex of constitutional rights and freedoms: freedom of conscience and religion, freedom of assembly, the right to express public opinion, etc. At the same time, the implementation of the constitutional principle of ideological diversity is possible in the organizational and legal forms established by law. And such forms are political parties and public associations.

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