



ENSURING THE PROTECTION OF HISTORICAL TRUTH AS A NEW PRINCIPLE OF CONTEMPORARY RUSSIAN CONSTITUTIONAL LAW

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The subject of the article is the content of the constitutional amendment of 2020 on the need to ensure the protection of historical truth.

The purpose of the research is confirmation or confutation of the hypothesis that protection of historical truth should not be provided by measures of constitutional and legal regulation, since this would conflict with other constitutional principles.

The methodology of research includes analysis of academic researches concerning the essence of historical truth, interpretation of Russian Constitution.

The main results, scope of application. The author proves that "historical truth" in the constitutional and legal sense is the goal of an objectively and conscientiously minded researcher, guaranteed in a free democratic society by the constitutional right to freedom of thought, scientific creativity and expression. Goal-setting in cognition is a matter of mental activity that is difficult for the democratic control of the state and law. From a normative point of view the moral aspect exists here only (the search for historical truth is a virtue, its distortion is a vice). Constitutional democracy is based on the will and needs of today's generation of people. The past, of course, has a certain significance, but it cannot be considered decisive. An excessive preoccupation with traditions and the historical past is fraught with stagnation, stagnation or even degradation of the state mechanism. Constitutional regulation of historical truth leads to unnecessary sacralization of the history of the state, which is profoundly alien to the true legal essence of the constitutional system of a modern democratic society and the objectivity of historical and legal science. State-legal influence in this area is difficult and entails risks of legally binding ideology, which is prohibited by the first chapter of the "Fundamentals of the constitutional order" of the Constitution of the Russian Federation (part 2 of article 13) and the current acts of the Russian Constitutional Court.

Conclusions. The legal obligation to "ensure the protection of historical truth" deserves a critical assessment, since it is difficult to combine with the constitutional rights to freedom of scientific creativity, freedom of thought and speech, the principle of ideological diversity and the democratic nature of the Russian state. The right of citizens to their own position on historical issues and search for their "historical truth" followed from the constitutional regulation before the constitutional amendments of 2020 and continues to operate today due to the immutability of chapters 1, 2 and 9 of the Constitution of the Russian Federation.

1. Introduction.

The constitutional amendments of 2020 brought a lot of new things to the process of state-building in Russia, not limited (as may have been originally intended) to innovations in the calculation of presidential terms of office and the division of competence between the highest state bodies. In addition to constructive and very useful constitutional and legal ideas for society (we do not mean all of them, but many), due to a number of reasons, some legal provisions that can hardly be called constructive and useful have "leaked" into the constitutional text. Among them, in our opinion, is the new principle of "ensuring the protection of historical truth". The acquisition by this principle of the legal force of the constitutional establishment (Part 3 of Article 67.1 of the Constitution of the Russian Federation), supported by the authority of the popular vote, to some extent complicates its critical scientific understanding. However, this, in our opinion, should not deter constitutional and legal science from free from ideological prejudices and, at the same time, reasoned and responsible discussion. In this regard, it is legitimate to put the following group of interrelated constitutional and legal issues for theoretical discussion: does "historical truth" exist? Does it need "protection"? And how should its protection be "ensured" in a democratic society?

2. What is "historical truth" and does it exist objectively?

The concept of "truth" and its meaning is one of the key socio-philosophical problems, over the resolution of which more than one generation of civilized humanity "struggled". In essence, this is a system-forming issue in legal theory, legislation and law enforcement practice: the search for "truth" in normative terms is something that positive – minded legal theorists and legal practitioners generally

strive for. In this context, "truth" is the same as "law" (in the objective sense) and "justice". To the attainment of truth, right and justice must strive, sometimes you can get closer and even, to a certain extent, for a while to achieve, but to announce something "absolute truth" it would be very rash side critical to his figure and, in General, the thinking of the individual. The Russian-language term "truth" has another meaning-the opposite of "lies". This is a question of truth, the reliability of facts, the exclusion of mysticism and fiction.

The concept of "historical truth" in relation to this problem complements the retrospective aspect. The past has already happened, and we cannot change it. But it can be differentially evaluated by descendants, including-negatively and positively: as "what was" and "what was not"; what was "right" and what was "wrong" (see, for example., [1; 2; 3]). We believe that the context of part 3 of article 67.1 of the Constitution suggests, mainly, that legal interpretation: some past events are subject to positive interpretation by contemporaries, others of their negative thinking. This is a kind of "historical truth", which supposedly should be put under the protection of the state due to the requirements of the Constitution of the Russian Federation. But is there an objective "historical truth"?

At least the following two factors contribute to a negative answer to this question. first, the past is forgotten. it is not by chance that the institution of limitation is practiced in procedural jurisprudence. Over time, the evidence base loses its relevance and prevents the law enforcement officer from reliably establishing legal facts. Any other retrospective activity, including scientific and cognitive activity, looks similar [4; 5]. Secondly, the past is distorted, and there is nothing wrong with that. Even when evaluating ourselves personally "in the past", we inevitably exaggerate or downplay the significance of

events and facts, since we are talking, in fact, about the past "in the present" [6; 7; 8]. If the object of modern assessment is the past activities of other people or, especially, communities, the state and society as a whole, reliability in the strict sense of the word becomes generally unattainable.

Therefore, "historical truth" in the constitutional and legal sense is only the goal of an objective and conscientious researcher, guaranteed in a free democratic society by the constitutional right to freedom of thought, scientific creativity and expression of opinion. Goal-setting in cognition is a matter of mental activity, which is difficult for the democratic control of the state and law. From a normative point of view, here, at best, the moral aspect is visible (the search for historical truth is a virtue, its distortion is a vice). As for the state-legal impact, *ceteris paribus*, it is difficult and entails the risk of a legally binding ideology that is prohibited by the first Chapter "foundations of constitutional order" of the Constitution (part 2 article 13).

In this regard, A. K. Guts writes: "Is a person, a researcher, able to accurately reconstruct the events of past epochs? Is the history of various civilizations, that is, everything that existed in their past, subject to registration on paper, in which the historian's pen, having first described the main contours, gradually, not without errors, but with their correction in the future, confidently draws one detail after another? One of the most common myths in society is the belief that historical science is not only capable of this, but also intended for such activities. The historian is sure that inwardly he is free to carry out such work. If he is not hindered by politicians, ideologues, and unfriendly colleagues, "then" nothing will hinder his immersion in the process of obtaining the necessary facts and documents" [9, p. 4].

3. Whether to protect the "historical truth"?

Does "historical truth" need protection? To some extent, yes. If the

researcher is prevented from accessing information, interpreting it freely and communicating it to the public, the constitutional rights to information, freedom of thought and speech are unlawfully violated or lawfully restricted. Information about the state cannot be completely public. Otherwise, it would violate the regime of state secrets, hinder the guarantees of national security of each of the countries participating in international cooperation, which are generally recognized by the world community. The determination of the legality or illegality of the relevant legislative restrictions in a democratic society is the competence of the constitutional justice, whether it is specialized in the form of an organizationally separate constitutional court or related to the sphere of activity of courts of general jurisdiction.

Does the State, represented by its authorized bodies, have the right to claim the establishment of "historical truth"? Despite the apparent evidence of a negative answer to this question, at least in the constitutional and legal dimension, it is not difficult to see that the Russian state has almost always done this, and sought to give it a state-legal character. Kievan Rus, the Tatar-Mongol yoke, the Moscow Tsardom, the Imperial-Petrine period, Soviet Russia and modern society have never been distinguished by a harmonious state-methodological continuity. Rather, on the contrary, they were completely different Russians who were clearly irreconcilable with their past. Following this, each of the above-mentioned "Russians" developed its own ideologically oriented "historical truth", the main meaning of which was to belittle the achievements of previous rulers and adequately elevate the greatness of the current government.

In this regard, it seems rather controversial to establish part 2 of article 67.1 of the Constitution of the Russian Federation on "unification of a thousand-year history", "preserving the memory of ancestors, and especially, "continuity in the development of the Russian state". Russia as a state is indeed

united by more than a thousand years of history, but its historical genesis was very discrete. Is it possible, with such a degree of "discontinuity" (Kievan Rus, the Tatar-Mongol yoke, the Moscow Tsardom, the imperial-Petrine period, Soviet Russia and modern society), to demand at the constitutional level the recognition of "continuity" in development, while discreteness was almost the main feature of Russian political history? In other words, our generation is constitutionally obliged to be "hereditary, respecting the will of their ancestors", while today it is historically known that many of our ancestors did not value continuity at all and preferred the path of discrete development, which denies historical continuity and respect for the will of their ancestors. Should we honor the hypothetical position of previous generations, if they valued the will of their predecessors in a very different way than we would like today due to the constitutional provisions of 2020? All this, in the end, leads to an unnecessary sacralization of the history of the state, which is deeply alien to the true legal essence of the constitutional system of a modern democratic society and the objectivity of historical and legal science.

Constitutional democracy is based on the will and needs of today's generation of people. The past, of course, has a certain meaning, but it cannot be considered decisive. Society is changing and, following this, the ruling political forces that represent the interests of the electorate must adjust their position as a result of the next election. In the period of Gorbachev's "perestroika", Russians longed for unity with the world community with the same orthodoxy with which they now prefer national identity and patriotism in state-building. Similarly, other preferences of the electoral body are changing, which should be accompanied by a flexible state policy. The excessive enthusiasm for traditions and the historical past is fraught with stagnation, stagnation, or even degradation of the state mechanism.

4. The content of constitutional and legal support for the protection of historical truth.

Part 3 of article 67.1 of the Constitution mentions the need to "ensure the protection of historical truth" in the context of two like-sense regulations: responsibilities "to honor the memory of defenders of the Fatherland" and to avoid "derogation of the values of the feat of the people in the defense of the Fatherland." Does this mean that "ensuring the protection of historical truth" is mainly reduced to military-historical topics? Moreover, an analysis of the literature on this subject shows that a significant number of authors generally understand "historical truth" only as "the truth about the Great Patriotic War". V. A. Borisov and S. S. Sinyutin write: "The campaign of falsifying the results of the war was launched in the West, primarily through the efforts of the United States, immediately after the end of World War II. Its main directions were: the desire to assign responsibility for the outbreak of war equally to both Hitler's Germany and the Soviet Union; belittling the decisive role of the Soviet Union and its Armed Forces in the defeat of Nazi Germany; exaggerating the losses of the Red Army, both in individual battles and in the Great Patriotic War as a whole; accusing Soviet commanders and military leaders of incompetence and poor professional training; denying the liberation mission of the Soviet Army, which saved many peoples of Europe from Fascist slavery. And these trends of slander and falsification have survived to the present time, acquiring only a more blasphemous and sophisticated character" [10, p. 155].

I. M. Bojarshinova (to some extent, opposing the previous author) said that "in the period of existence of the USSR the attempts to "correct" the story was very slight and not questioned the assessment of the causes and nature of world war II, including the total for the allies of tasks in the war and the outcome of a joint victory. the situation has been different since the late 1980s, when the revision of historical memory began to escalate. at the same time, the initiators and perpetrators of the

war, the nature of the war for different sides, the course of the war, the contribution of its participants to the victory, the price of victory, the role of the leadership and the people, the motives of participation in the war of the authorities and the people, the understanding of who was the winner, and whether the victory itself, and much more" [11, p. 28].

Judging by the above sources, it is logical to assume that the propaganda machine of a number of foreign countries really seeks to revise the existing historical interpretation of some events of the Second World War, which does not always and not in all correspond to the geopolitical interests of modern Russia. However, does this mean that Part 3 of Article 67.1 of the Constitution of the Russian Federation legally obliges Russian citizens to join this information confrontation, and it is "on the side" of Russian interests? Freedom of scientific creativity (Part 1 of Article 44 of the Constitution of the Russian Federation), freedom of thought and speech (Part 1 of Article 29 of the Constitution of the Russian Federation) presuppose, at a minimum, the right of a citizen to refrain from participating in such a discussion, not to mention the right of an individual to independently assess historical facts as he sees fit, without any legally binding order from outside. This is the legal essence of the constitutional freedom of a decent person living in a democratic country and supporting the values of the rule of law. The confrontation of propaganda machines can be carried out on the basis of a voluntary, non-constitutional association of relevant ideologues, but not because of the legal obligation of citizens to take a historical and legal position in relation to the results of certain political events of the past.

In addition, a restrictive (if not truncated) understanding of Part 3 of Article 67.1 of the Constitution of the Russian Federation in the context of evaluating only the results of the Second World War is not common to all authors. Consequently, Part 3 of Article 67.1 of the Constitution of the

Russian Federation, perhaps even against the wishes and will of its authors, acquires a completely different constitutional and legal meaning. The Constitutional Court of the Russian Federation in its Opinion of March 16, 2020 found that Part 3 of Article 67.1 of the Constitution of the Russian Federation does not violate the constitutional principle of ideological diversity, since it cannot be interpreted as establishing a mandatory and state ideology. But, unfortunately, part 3 of article 67.1 of the constitution of the Russian Federation is literally read as "ideological". The conclusion of the Constitutional Court of the Russian Federation in the legal sense acts in systemic unity with Part 3 of Article 67.1 of the Constitution of the Russian Federation, so the ideological interpretation of this norm will be illegal. But in this case, it is logical to ask the following question: why did the rule of Part 3 of Article 67.1 of the Constitution of the Russian Federation appear in the legal system at all? If it is "ideological", then it contradicts chapter one of the Constitution of the Russian Federation due to the legal position of the Constitutional Court of the Russian Federation, if it is "not ideological", then it is devoid of any legal meaning. Is it possible to understand the constitutional requirement to "ensure the protection of historical truth" in any other way than "ideologically"?

5. Conclusions.

Based on the above, we consider it possible to formulate the following generalizations and conclusions. Part 3 of Article 67.1 of the constitution of the Russian Federation, which established the legal necessity of "ensuring the protection of historical truth", deserves, mainly, a critical assessment in the context of its relationship with the constitutional rights to freedom of scientific creativity, freedom of thought and speech, the principle of ideological diversity and the democratic nature of the Russian state. The right of citizens to own position on historical issues and their search for "historical truth" that cannot be legally prescribed from outside in the

form of mandatory ideological state regulations that followed from the constitutional regulation in force prior to constitutional amendments in 2020, and continues to operate today, due to the immutability of chapters 1, 2 and 9 of the Constitution.

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