

TRANSFORMATION OF CONSTITUTIONAL IDENTITY DUE TO CONTEMPORARY CHALLENGES

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The subject. This article represents an attempt to research the notion of “constitutional identity”, which has recently emerged as a relevant concept in constitutional law, through the prism of its transformation reacting the world’s challenges.

The purpose of the research is to confirm or disprove hypothesis that both typical and extraordinary factors may influence differently on the transformation of constitutional identity.

The methodology. The article is based on the dialectical method, as well as on the logical, historical, systemic methods. A comparative method was applied to study the features of the constitutional identity of States. Authors pay attention to the interaction of international and national policies.

The main results, scope of application. Within the doctrine of constitutional identity it is presented a discussion with respect to terms and definitions of constitutional, state or national identity, constitutional identity of citizens. Moreover, such two notions as “individuality” and “identity” form a curious couple since “identity” may contravene “individuality”. Different factors which can influence on transformation of the constitutional identity, are listed (globalization (antiglobalism), universalization of constitutional values, COVID-19 pandemic, migration, etc.). In particular, different countries choose different models of reflecting the processes of globalization in their domestic constitutional legislation: from striving for unification to systematic confrontation. In this regard, it seems necessary to assess these factors, taking into account the experience of different states. Besides, the activities of international bodies can give rise to the universalization of constitutional values. For example, supranational bodies (in particular, the European Court of Justice) develop general constitutional traditions and principles applicable to all countries for the formation of a special common culture. Another example is the current epidemiological crisis. The coronavirus infection has made its own adjustments to the constitutional identity of states. Examples of such transformation are full border closures or partial closures with individual states; amendments to the national legislation, according to which the issues of measures permissible for implementation by the state are being revised in order to ensure the life and health of the population.

Conclusions. Definition the constitutional identity is an important strategic framework for national policy. However, there is no certain fixed constitutional identity of the state. On contrary, the identity of the state tends to be changeable. Transformation can be regarded as voluntary, forced or consciously responsive, expected or not. Voluntary transformation usually becomes a response to the evolutionary development of society, scientific and technological advances and discoveries. Forced transformation is likely to be a reaction to economic, epidemiological, political crises. Therefore, in order to determine the constitutional identity of certain state it is necessary to understand the cultural, historical, social and political contexts of its formation and current development in the conditions of the contemporary world.

1. Introduction

The definition of constitutional identity constitutes an important strategy for domestic policy. Nowadays the historically well-known phrase "L'état, c'est moi" finds a new interpretation. Each state, regardless of its form of government or even the personality of the head of state, possess their own «I am ...», strengthening and showing it to the world. Due to the fact that the identity of the state is inextricably linked with a whole complex of significant elements: history, politics, culture, economy and others - each country has its own individuality (identity). The 1933 Montevideo Convention defined basic elements of the state's legal personality as territory, population, state bodies and the ability to enter into international relations. Therefore the identity must reflect ethnic, ideological and religious issues (the population criterion) within its borders (territory criterion), as well as outside them when it comes to the presentation of the country in the international arena. The organization of the government, the system of checks and balances in each individual state remains an important tool for building the identity.

There are many theoretical deliberations concerning the term of identity and its two forms of translation or interpretation: Individuality and Sameness. Surprisingly, both terms are antonyms in different contexts. "Identity" can mean a complete coincidence of properties, which, it would seem, in its essence narrows down the idea of one's own state personality. However, this contradiction is not accidental, since "identity" does not exclude the uniqueness of the state. This, this term is used to demonstrate a modern definition of its uniqueness, but in comparison with other countries. In this case the "identity" gives rise to doctrines about legal systems or families, about the overlapping domestic policy in relation to certain issues (for example, migration). Ultimately, "identity" can be the result of the country's entry into a supranational organization. Such participation in a supranational organization will simultaneously become a feature of the individuality of such states in the international arena.

Moreover, there are definitions that assigned to the word "identity" in discourses: state identity, national identity, and constitutional identity of the state. The variety of approaches reflects the shift on different elements of the state and statehood and depends on translation of scientific works.

What makes the issue even more controversial is the dynamics and sensitivity of the constitutional identity to various factors. There is no certain absolute fixed identity of the state. On the contrary, the identity of the state is subject to incessant transformation, voluntary or forced. Voluntary transformation becomes, as a rule, a response to the evolutionary development of society, scientific and technological advances and discoveries. Forced transformation is a reaction to crises, including economic, epidemiological, political.

Within the international relations, the transformation of identity can be imposed on the state or be carried out on its initiative. In this event, we face the issues of the constitutional and national values of the state, the implementation of decisions of interstate bodies, adherence to the recommendations of the international community, deviations in the interpretation of human rights at the international or domestic level, including the state's determination of the boundaries of such possible deviations and their recognition. In particular, securing the vital interests of the state, society, individual, a specific state recognizes national and state values, highlighting among them the territory, a sovereign state, a people with their history and culture, etc. Understanding the values of the most significant, important benefits, characteristics, states do not always fix them at the constitutional level, recognizing the values that are established by internationally recognized norms and principles. The presence of a wide variety of constitutional and national values makes it obvious that the theory of constitutional axiology has not received proper development to this day in terms of defining values, their meaning and classification [1].

Each of the above problematic issues need the analysis in the context of the modern challenges.

2. Discussion about terms and concepts

Comprehension of the phenomenon of constitutional identity in the domestic legal science began relatively recently. Most of the work on the issue of constitutional identity “dates back, at the earliest, to 2016, that is, refers to the period when this concept was first used in the practice of the Constitutional Court of the Russian Federation” [2, p. 63].

The first thing that can be encountered when trying to define the subject field of research, as noted earlier, is the terminological diversity and instability of the terminology used. This, of course, may indicate, firstly, about the relative novelty of the problem of state and constitutional identity and poor study or insufficient practical development of this topic, and secondly, about the desire to appropriate the accumulated other scientific (in any case, a foreign language) tradition is a stock of knowledge.

The greatest difficulty in correlating and understanding the meaning of the concepts of “state identity”, “national identity” and “constitutional identity of the state” is in their external similarity. At the same time, these concepts are completely different in order. On the surface lies the fact that the difference between these types of identities is due to the difference in subjects, bearers of these identities: the bearer of state or national identity can be an individual or a social group, whereas the owner of the constitutional identity of the state is the state itself.

It can be noted that some confusion of meanings is also allowed by the Chairman of the Constitutional Court of the Russian Federation in the program article “Constitutional Identity of Russia: Doctrine and Practice.” V.D. Zorkin notes: “The problem of national constitutional identity attracts the attention of specialists primarily in the context of two recent trends: 1) the revival and spread of populist ideology that has swept modern developed societies around the world, and 2) the contradictions between national and supranational judicial systems, which are increasingly noticeable in different regions of the world. Populism is associated with the crisis of liberal ideology, the values of which are losing their former significance in the light of global events. One of the

consequences of such a change in development guidelines is the outlined return of states and nations to their traditional values, which cannot but be reflected in the law”¹. Obviously, speaking about the crisis of liberal ideology and the spread of populism, V.D. Zorkin refers to identity as a socio-psychological category, not a legal one, and therefore considers it in an individual sense.

The problem of confusion of concepts, in our opinion, is rooted in the fact that the English word “identity”, which is borrowed without translation in Russian-language texts, denotes not only identity or identity itself, but also “personality”, “individuality”². In this regard, it would be correct to use the term “constitutional individuality of the state” (or “constitutional personality of the state”) in political and legal studies. T.I. Ryakhovskaya, who writes: “when referring to the Treaty (talking about the Maastricht Treaty), the term “national identities” is found in English, which literally translates as “national identities” (and not “national individuality”). This probably confused the domestic state-legal thought, in which constitutional identity is perceived as something special, inherent only in a particular state, which does not correspond to the translation of the term “identities” in full. [3].

The same happens with the translation into Russian of the concept of “national identity”. Due to the fact that “in the world scientific literature and international political tradition, the so-called statist interpretation of the term “nation” is widespread, when a nation is understood as a totality of citizens (residents) of one state” [4, p. 20] and when “nation” is essentially synonymous with the nation

¹ Zorkin V.D. Constitutional identity of Russia: doctrine and practice // Speech of the Chairman of the Constitutional Court of the Russian Federation / Constitutional Court of the Russian Federation. URL: <http://www.ksrf.ru/ru/News/Speech/Pages/ViewItem.aspx?ParamId=82> (date of address 10.05.2021). (In Russ).

² Cambridge Free English Dictionary and Thesaurus. URL: <https://dictionary.cambridge.org/dictionary/english-russian/identity> (date of address 10.05.2021).

state, national identity can be equated with state identity.

In light of this clear distinction, the concepts of the constitutional identity of the state and the constitutional identity of the citizen (or social group) are required. In the first case, as we have already said, constitutional identity should be understood as the constitutional individuality (originality) of the state as such a qualitative characteristic that allows the state, entering into relations with other states and supranational entities, to preserve its subjectivity. The Constitutional Court of the Russian Federation in its legal positions casually touches upon the issue of the content or structure of the constitutional identity of the state, noting that its basic elements are domestic norms on fundamental rights, as well as norms guaranteeing these rights on the foundations of the constitutional order³.

It's known that the concept of constitutional identity is especially actively used to build argumentation in disputes arising between national courts and courts of supranational entities. Noteworthy in this sense is the opinion of A. Blankenagel: "By using the institution and the concept of "constitutional identity" in the sense of the impossibility of executing ... the decision, the national constitutional courts are misleading the addressees of their judicial decision They legitimize their decision by referring to the results of psychology and sociology. In fact, the courts ... distort the meaning of this psychological and sociological concept" [5, p. 62].

The constitutional identity of an individual or social group is manifested as a type of social identity based on identification with fellow citizens or statehood. At the same time, as G. Jacobsohn notes, "constitutional identity is a political structure designed to express in legal categories the experience, goals and commitment of society and whether or not it becomes a reality depending on the actions of those to whom it applies this constitution" [6, p. 58].

In this case, constitutional identity can be

considered as one of the manifestations of particular cases of state identity of citizens, since the constitution in this term acts not only as a form of legal fixation of socially significant values, but primarily as a state symbol [7, p. 6]. The Constitution, as the fundamental law of the state and the starting point in the development of the entire national legal system, is undoubtedly the central symbol of the legal identity of the nation. The constitutional identity and state identity of citizens are generally used for the purposes of social management. According to M.V. Rubtsova and A.G. Sanina, "state identity is a factor of consolidation around the interests of the country, therefore, the degree of its rootedness in the consciousness and actions of citizens is a guarantee of political, spiritual consolidation, and the unity of society" [8, p. 87-88].

Thus, the constitutional identity of citizens and the constitutional identity (individuality) of the state are not identical, while they are closely related, since they go back to the same values and are actually constructed by the same subject.

The constitutional identity of the state is formed on the basis of social values, which are legally enshrined in the form of legal norms in normative acts and, first of all, in the constitution. However these social values are not abstract, they arise in the national culture and are legitimized by the very life of the nation. A.N. Mochalov, discussing the mechanisms of the formation of ethnic identity by a group, notes: "When people who identify themselves with others on the basis of one or more cultural markers discover that each other has common interests determined by common values, such interests begin to be perceived as a consolidated interest of the entire ethnic community and serve as the basis for collective action, in particular for putting forward group claims" [9, p.82].

Identity theory was actively developed in the XX century. It was during this period of large-scale social crises and the strengthening of the globalization trend that identity as a scientific category of psychology attracted the attention of sociologists, political scientists and lawyers. From the point of view of social psychology, group identity can be considered as the inclusion of a person in various communities, supported by a subjective

³ Decree of Constitutional Court of Russia dated 14 July 2015 no. 21-P.

feeling of inner unity with his social environment [10, p. 36]. American sociologist and political scientist S. Huntington identified the following features of identity:

- identity is inherent not only to an individual, but also to a whole group;
- identity is a construct;
- identity is pluralistic, that is, individuals have multiple identities;
- identity is the result of interaction [11, p. 36].

If on the one hand, as S. Huntington said, "identity is what we think about ourselves, then what we strive for" [10, p. 38], and on the other hand, it is the result of the conscious activity of the one who constructs this identity, then identity always acts as a means of social control and, most importantly, a means of introducing, internalizing social norms.

The state, which actively uses persuasion mechanisms, realizing the function of ensuring the rule of law, is interested in the construction of identities. The formation of state (constitutional) identity among citizens has at least two goals that are significant for the state. A single state (constitutional) identity, which presupposes a kind of social calibration of individuals, firstly, increases the degree of control over the collective, and secondly, as a more general, universal identity, it allows you to remove the existing internal contradictions that arise between representatives of the included groups, thus overcome interethnic, interfaith and other intergroup social conflicts.

Thus, there is a certain value-identity cycle, within which identities seem to reproduce each other. The social life of such a large and complex collective as a nation forms common social values, which are subsequently legalized and enshrined in the constitution. It is the main constitutional and legal values that form the "foundation of the structure of the constitutional and legal conceptual space" [12]. And as for the constitution, as K.V. Aranovsky stated, "it becomes valid due to the fact that it is introduced into the composition of beliefs, expressed in feelings, thoughts, actions, in their way of life by people involved in the constitutional tradition" [13, p. 208]. This is how the constitutional identity of a society and a nation is

formed. Establishing rules of conduct in various spheres, cementing morality and law, culture and ideology, religion and modern factual features of the state, the state forms constitutional identity, which is considered in science as "a model for the development of constitutional and legal institutions within the framework of international experience, and knowledge of national characteristics of constitutions and constitutional and legal regulation [14]. This identity gives the state, as a subject of international law, the opportunity to declare its individuality, that is, already postulate the constitutional identity of the state. Possessing significant organizational and information resources, including within the framework of the implementation of educational policy, the state is engaged in the education of citizenship and patriotism and forms (or takes root) some values, which then in the depths of the social life of the nation again reveal themselves as stable social values.

3. Types of transformation of constitutional identity and influencing factors of our time

The constitutional identity of states is not static. The transformation of identity is conditioned by changes in any constituent element. As for the types of transformation of constitutional identity, we may divide the constitutional identity into types as forced, voluntary, or mixed (consciously-responsive). For example, in the past five years, the tendency to amend the constitution has been identified (Albania, Austria, Brazil, Georgia, Greece, India, Kazakhstan, Costa Rica, Peru, Russia, Ecuador and others). The active constitutional process of the XXI century possesses two features: the intensity of changes and multiple directionality, polarization of the goals and content of constitutional reforms [15, p. 98]. These actions, initiated by the population or authorities, directly affect the constitutional identity of the state, consolidating the main political, social, economic, cultural foundations or adjusting them. As a rule, amending the constitution is a sovereign act of the state, which means that the transformation that will invariably occur as a result will be voluntary. If the actions to amend the country's constitution were made under the external factors (for example, a reasonable and real

threat of invasion (violation of borders), external undermining of the foundations of the constitutional order, the state's defense capability, or are associated with legally imposed obligations, a decision of an international body that is binding on the state), then it should be assumed that such actions are compulsory. In this case, the transformation of the constitutional identity of the state will be regarded as forced.

The mixed type of identity transformation meets all the complexity of modern social relations, when any changes outwardly can be submitted as voluntary, but be a forced measure to overcome the conflict. An example of such a consciously responsive transformation of constitutional identity can be amending the country's constitution, but not with the aim of fulfilling an international obligation, but bypassing it, relying on national interests and constitutional values. The state may change the domestic policy on the national or migration issue under the pressure of the interstate national conflict or the international community (that is, voluntarily), but taking into account separately arisen interethnic clashes or existing threats, as a coercive but timely response to phenomena in society.

Besides, it should be noted that the transformation of constitutional identity can be planned and sudden. In the evolutionary aspect, constitutional identity develops constantly in the current political activities of all state bodies, as well as in its society [16]. The development of identity as a result of a verified policy is expressed in the establishment of a certain political and legal regime. Moreover, it is not necessary that this constitutional identity is perceived by the population of the country and international partners in the same way. It is more important that the demonstrated constitutional identity of the state corresponds to reality. Although the theory allows, as indicated above, the reading of constitutional identity as a kind of construction to which the state will strive.

Sudden transformation is an identity's response to certain factors, both obvious and not so obvious. The fact is that even a point change, following the butterfly effect, can subsequently become the root cause of the transformation of

identity as a whole. For example, the coronavirus pandemic has become an obvious and direct factor that demanded changes, adjustments, and deviations from the usual domestic regulation from states. Certain scientific discoveries (the invention of the wheel, the automation of production, the invention of electronic computers, and the spread of the Internet) can only have an impact on the constitutional identity of the state after a certain period of time, which determines technological progress.

In this regard, it is not possible to enumerate all the factors influencing the matter of the state's identity. There are millions of them. Not all of them are explicit. But the modern period allows us to attribute the following phenomena to the challenges of globalization: integration and anti-globalism, digitalization and the crises of humanity.

3.1. Globalization, integration and anti-globalism

The issues of globalization are almost of paramount importance in the problem of defining constitutional identity. Globalization as well as anti-globalism, is simultaneously the cause, prerequisites and determining factor of the transformation of the state's own identity. European authors were among the first to use the term national (constitutional) identity in order to positively assess the existence of the European Union, as a key constitutional feature of the interaction of countries, and then to criticize this international organization, which infringes on the real constitutional identity of an individual member - the state. There remains a third reading, when national courts use "constitutional identity" as a sword, wielding it in different directions: from recognizing their own sovereignty in certain issues to making concessions to supranational structures or making their decisions [17].

Besselink, analyzing the changes in the national (constitutional) identity of the countries of the European Union before and after the conclusion of the 2007 Lisbon Treaty, notes that multiculturalism and Euroscepticism have become the challenges to integration caused by globalization. Historically, European integration was a response to intolerance between states: antagonism between Germany and France,

overcoming the anti-democratic regimes that emerged at the beginning of the 20th century, for example, in Italy and Germany [18].

The integration itself raises the issue of constitutional identity. The solution can be different and correspond to a certain time. Thus, in relation to the European Union, the 1992 Maastricht Treaty contained the provision of Article 6 (3) that the Union respects the national identity of the member states. In 2007, Article 4 (2) of the Lisbon Treaty broadened the scope of recognition of national identity, as it was revealed in the fundamental political and constitutional structures, including in the field of local and regional self-government, as well as the functions of the state, especially those aimed at ensuring its territorial integrity, to maintain public order and to protect national security. However, the declared respect and recognition does not relieve the member states of the European Union from the problem of who determines their constitutional identity and within what limits.

The European Court has repeatedly referred in its case-law to the importance of specific constitutional provisions in member states in order to justify a specific exclusion or difference. At the same time, there are cases when the European Court suppressed the constitutional identity of states, for example, in the *Omega* case. The European court did not recognize the actions of the authorities in the German city of Bonn, where games with laser weapons were banned, when some people pretend to kill other people for fun, because the game violates human dignity protected by law of Germany. The European Court of Justice pointed to the uniform application of freedom of service throughout the European Union and to the fact that Union law does not impede economic activity consisting of commercial games simulating acts of murder⁴.

Some states (France, Germany, Poland, Hungary) defend a certain position regarding the content of their constitutional identity through the bodies of constitutional control. According to the

decision, dated 30 June 2009, the Federal Constitutional Court stated that integration presupposes readiness for joint actions and recognition of the opinion formed jointly, but not submission or rejection of one's own identity (paragraph 228 of the decision) [20, c. 48-49]. Julien Sterck explains this policy by the double intention of the member states of the European Union: to define themselves in the developing process of European integration and at the same time to oppose their own constitutional identity to the uniformity of practice [21].

All states that are members of supranational associations face similar issues of preserving or losing identity in the process of integration. In particular, the creation of the BRICS also became the cause of globalization and the response to it. On the one hand, the states took a step towards interaction, despite the absence of common borders and the incomparable difference in the state system of each participant [22]. Each member-state of the BRICS has a recognizable constitutional identity. This circumstance of social, economic and legal heterogeneity of countries should be assessed as a positive factor for the evolution of a single integrated structure without suppressing the constitutional identity of the participating countries.

Anti-globalism also has the power to influence the content of constitutional identity. Antiglobalists believe that globalization generates inequality of countries, the dominance of some of them and the dominance of individual ideologies. Accordingly, the greater the influence of anti-globalization in the country, the more likely the political decisions taken may not coincide with the position of international bodies and organizations.

In this regard, a burning challenge arises of the invasion of international law into the national legal system. To one degree or another, states open their jurisdictions to international law, sharing part of their sovereignty. There are various examples of the reception of international law on the way from monism to dualism [23]. In addition, a number of countries actively undertake international obligations and strive to fulfill them, are members of universal and regional international organizations (most of the countries of the European Union). Article 27 of the 1969 Vienna Convention on the Law

⁴ ECJ 14 October 2004, Case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*.

of Treaties (116 member states) specifies that the norms of national law cannot serve as an excuse for the state for non-compliance with the treaty. At the same time, the state has the right to independently outline the boundaries of the influence of international acts on the legal system, applying international legal and domestic regulation together in their interaction and complementarity. It is also typical for European countries to follow the norms of "soft law", in particular, the recommendations of the Organization for Security and Co-operation in Europe (OSCE). That is, formally, the norms of individual declarations and documents adopted at the supranational level are legally advisory in nature. The state that fails to comply with the rules of "soft law" does not face sanctions. At the same time, such norms are not devoid of influence on domestic practice, since a state party to an organization seeks for the most part to demonstrate to the international community goodwill in implementing the recommendations.

The United States of America is the opposite example. The United States avoids participating in international treaties without imposing additional obligations on the state, which also determines the country's constitutional identity. This is the new trend. In order to preserve national identity in human rights issues, states are withdrawing from previously signed international agreements, refusing to sign and imposing new obligations, and are making changes to the basic laws (constitutions) of the country.

The two presented different approaches to integration significantly affect the volatility of constitutional identity, since states involved in international legal relations are more likely to resort to forced or voluntary transformation of their own identity. At the same time, countries with an autonomous from the international community policy have a certain identity immunity.

3.2. Universalization of constitutional values

It should be recognized that there is a variety of constitutional values. Given the constant development of constitutional texts, caused by political, economic, social conditions and needs,

the use of various criteria for determining the significance of values, it must be added that any classification of values is rather arbitrary, given the possibility of defining new values. Nevertheless, it is quite possible to talk about a system of values, including constitutional ones. In the presence of a system, it is important to maintain a balance of values, localize contradictions in assessing certain values and determining the supremacy of some values over others. It is undoubtedly possible to distinguish values by species. So, according to the Constitution of the Russian Federation, first of all, it is necessary to highlight such a constitutional value as a person, his rights and freedoms, which is directly provided for by Article 2 and is detailed in a separate chapter. According to G.A. Gadzhiev, this is the highest value, suggesting the presence of other constitutional values and the existence of a hierarchically structured system of constitutional values [12]. It is necessary to highlight the values that determine the foundations of the constitutional system of Russia, taking into account the priority of the norms of Chapter 1 of the Constitution (Article 16), the values that are listed in the preamble of the Constitution of the Russian Federation, but at the same time are not repeated in the normative provisions of the constitutional text itself, the values enshrined in subsequent provisions Constitution. According to the results of the constitutional reform of 2020, 45 constitutional values additionally included in the text of the Constitution of the Russian Federation are distinguished, caused by changes in the systemic nature of global challenges in the world [24].

Thus, each state determines for itself its own list of values based on their state structure, political regime, form of government, attitude to religion, and other characteristics. In this regard, it is difficult for different states to propose universal constitutional values in different areas. Nevertheless, in the context of globalization, the development of mechanisms for the protection of human rights in particular, the international community strives to optimize values and their universalization.

Recognizing the diversity of constitutional values, the presence of their whole system, the issue of their correlation, internal hierarchy,

interaction of values, determining the priority of some values over others remains essential. Taking into account the practice of the European Court of Human Rights, the decisions of the Constitutional Court of the Russian Federation, it must be stated that the courts do not determine the primacy of specific values in resolving a dispute (if there is a competition of values). They only determine the priority of a specific value in a specific legal relationship.

The multilevel integration of states, as well as the activities of interstate bodies, can give rise to the universalization of constitutional values. For example, supranational bodies (the European Court of Justice) develop general constitutional traditions and principles applicable to all countries for the formation of a special culture. At the same time, such universalization significantly limits the constitutional identity of the state, since constitutional values are determined by the state itself, including through the official interpretation of the norms by the body of constitutional control [25, p. 108].

Finding a balance between the observances of universally recognized norms of international law, the preservation of status in the international arena and an independent constitutional identity is the continuous process that state shall follow. The country's leadership or the legislature usually play the key role in taking such decisions. Less often, the executive bodies may influence the process in terms of the specifics of the application of norms. Moreover, the judicial system can also provide the processes of national identification of human rights, including competing with the established international interpretation of the norm. The latter, however, does not exclude the state's adherence to international legal provisions. In this case, the state will be ready to accept the proposed constitutional values, adapting them to national values.

3.3. Crises and pandemic

Crises and other stagnant stages of historical, social, political, economic development are obvious factors influencing the transformation of the constitutional identity of the state.

As a general rule, any crises (from energy

to epidemiological) intensify the activities of the organs and population of the state, aimed at finding new strategies to combat the crisis, and hence development [26, p. 403]. It is impossible to omit the fact that the constitutional identity grows in times of crises. For example, the period 2008-2012 associated with the financial crisis. To overcome the devaluation of the national system for managing the needs of the economy, the states are forced to address to the international organs (lending to Greece) or to restore the banking system (Cyprus).

The migration crisis associated with the massive influx of refugees from Africa and the Middle Eastern states in 2015–2016 affected the change in the policy of European countries and the differentiated approaches of countries to resolve this crisis. Some countries continue to act on the principle of constitutional transformations, supporting the principle of tolerance - one of the key goals of creating transformations. Such countries have reorganized to a loyal migration policy. Some of them, for example, Germany, require similar policies from other member states of the organization. At the same time, some countries (Hungary, Sweden) closed their borders, thereby separating their own constitutional identity from the European Union. Greece, Italy, faced with a disproportionate distribution of migrants, sought help from other countries.

Currently, the migration crisis has not lost its relevance. In this regard, the UK has developed a plan to radically change the rules for granting asylum to reduce the number of illegal migrants. Leaders of influential parties in France speak of the need to abandon a number of articles of the 1950 European Convention on Human Rights in order to pursue an independent policy and really ensure the security of the state and the population. The European Commission proposed a revolutionary change in the migration legislation of the European Union - to abolish the Dublin Regulation. According to the provisions of the Dublin Agreement, the responsibility for the placement of migrants is borne by the state, the borders of which were primary crossed by the migrants.

Finally, the current epidemiological crisis regarding the spread of coronavirus infection has influenced on the constitutional identity of states.

Examples of the transformation can be border closures, including full border closures or partial closures with individual states. Amendments to the national legislation, according to which the issues of measures permissible for implementation by the state are being revised in order to ensure the life and health of the population. A number of states have changed their methods of government in order to carry out a whole range of necessary quarantine measures and stop the spread of the epidemic on the territory of the state. Some introduced strict restrictions on constitutional rights (Italy, Spain, Germany). Others refused such measures, focusing on the preservation of the current constitutional identity (Sweden, Belarus, Mexico) [27, c. 70].

Thus, not every state turned out to be ready to change the legal platform. The states that made changes in order to combat the pandemic have embarked on a long journey of creating and popularizing new legal institutions, including self-restraint of human rights, compensation for falling incomes of the population and the economy as a whole, effective and remote (truly "open ») government, revision of national projects (from military to health support projects).

3.4. Scientific and industrial achievements

Technological advances, scientific and industrial revolutions, directly or indirectly, can have an impact on the transformation of constitutional identity. A striking example is the Russian statehood, which from the 19th century to the present day has faced three options for the industrialization of the country. Each socio-economic transition was carried out in the parameters of the corresponding political and legal regime [28]. The current political and legal regime, in turn, determines the level of susceptibility to modern technologies, the speed of their adaptation in the state system, the dissemination of the latest achievements, and their availability among the population or, on the contrary, abandonment of such achievements, gradual acceptance.

There are many approaches to calculating scientific and industrial revolutions, but all in all the concrete achievement is a start point. The

current fourth scientific and technological revolution is related to digitalization. The social life is going to virtual (cloud) structures, and the transition to mobility is under way. The state and the population are increasingly guided by the situational strategy and tactics of social and political action. Accordingly, any choice of goals and means of achieving them becomes situationally dependent. The modern world order depends on a constantly changing network of information, resource, social and other connections [29]. In this regard, it becomes necessary to transform the management (legal regulation) of a large block of social relations: from the adoption of a sovereign network space of the entire state to the protection of a person's digital footprint.

In a similar way, individual technological breakthroughs have an impact on constitutional identity. For example, the development of technologies such as bioprinting, editing genomes using CRISPR, the creation of human and animal chimeras leads to both socio-economic and ethical-legal problems. As a second example, we propose the development of robotics using artificial intelligence (unmanned aerial vehicles, self-driving cars and equipment - automatic home helpers). In 2017, the European Parliament adopted a resolution on civil law rules related to robotics. In Russia, during the same period, a draft law was being developed "On Amendments to the Civil Code of the Russian Federation in terms of improving the legal regulation of relations in the field of robotics [30]. It is obvious that the very possibility of a robot functioning in human space gives rise to the need for both systemic legislative regulation in the field of robotics, as well as, possibly, a change in national interests, traditions of the population, if we consider a large-scale option of influence.

4. Conclusions

At the present stage of the development of the doctrine, despite the growing number of works devoted to the presented topic, it is difficult to assert about the formed unified doctrine or approach to the constitutional identity of the state. There is no concretization of the term, there is a substitution of the concepts of "individuality"

(originality) and "identity" (universality), although the individual and the universal in the usual reading have opposite meanings [31]. Besides, states try to preserve identity by developing national systems for the implementation and protection of human rights. There are no uniform approaches, but there are similar trends. Generalization of constitutional values meets opposition, but this fact does not exclude the harmonization and even universalization of legislation and the implementation of decisions of international bodies. Indeed, when studying the phenomenon of "identity", many questions arise, including practical questions about finding a balance between national and international interests, about the influence of national traditions on identity and the possible actual divergence of national interests with the state's personality, about the development of basic models of constitutional identity.

However, at the same time, it is not possible to fix the constitutional identity of the state in a certain template, since identity is mobile, changeable, unstable. The above examples of individual challenges of our time clearly demonstrate the transformation of identity: voluntary, forced or consciously responsive, planned or sudden. The ability to transform, including due to external factors (crises and achievements), international obligations, is an important sign of the constitutional identity of the state. The state, represented by its authorities and the population, needs to accept this transformational feature of its identity and, when developing a domestic or international policy, lay down the risks of transformation, its consequences and possible solutions.

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