
General Social Functions of the Constitution

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Abstract: This article notes that the constitution has an impact on the behavior of subjects, on the one hand, as a means of stimulation, encouragement, on the other hand, restrictions. It is especially emphasized that in this case we are talking about the general social mechanism of the functioning of the constitution, when special legal documents and levers of social control over the behavior of subjects are not yet used.

Keywords: constitution, function, functions of the constitution, general functions of constitution, influence on behavior, means of stimulation, general social mechanism.

It should be recognized that this problem is poorly developed in the legal literature, which is largely due to the novelty of the functional approach in the field of constitutional and legal research (although, for example, the study of the problems of state functions is of a long-term and intensive nature). And it is completely depressing that in the latest educational literature on constitutional law, the question of the functions of the constitution is most often reduced only to an indication of a set of some functions, at best, to their brief description.

So, in the course of the study of the constitution as a legal document, one should not be limited only by the functional-dynamic approach, which allows one to look at it as an active phenomenon. The fact is that the constitution also performs its functions in statics (for example, the preservation of information). But still, most of the functions of the basic law are manifested precisely in the process of its implementation, i.e. implementation of the principles laid down in it. Thus, the above provisions allow us to speak about the functions of the constitution not only as directions of influence, but also as external manifestations of its properties in the system of social relations.

Initially, we will consider **the general functions of the Constitution**, which include: 1) informational; 2) historical and cultural; 3) communication-active; 4) general social; 5) social control.

The information function lies in the fact that the constitution is a source of legally significant information. The more the basic law is in demand, the more complete the implementation of such a function. Many constitutions have been used in the legal process for decades or even hundreds of years. The oldest is the United States Constitution of 1787, which is still in force today. In a number of modern European states, the constitutions adopted in the 19th century have been preserved as valid: the Constitution of Norway (1814), Belgium (1831), Luxembourg (1868). The practice of publishing collections containing the texts of the fundamental laws of different countries should be considered very useful. Constitutional law cannot be studied without constant reference to its sources, and above all to the constitutions of states. The example of the Russian Federation is worthy of respect and imitation, where it has become a general rule to replicate not only the text of the Constitution itself, but also publish it in an edition with the comments of the Constitutional Court, which allows a deeper understanding of the nature of the Basic Law (for example [1]). Of course, publications where the text of the main law is accompanied by comments by leading experts in the field of constitutional law are

very informative. True, in contrast to the previously discussed, such a comment has not an official, but a doctrinal meaning.

The main laws of leading foreign states or countries of "young democracy" reflect the most important trends in constitutional development, which must be taken into account when studying the domestic constitutional (yes and not only) rights. In countries with a legal and democratic orientation, constitutions are a powerful factor in the moral orientation of subjects. In this sense, the most important function of the constitution is to form a socially useful, positive orientation of the subjective side of lawful behavior. Through the Basic Law, people receive information about their rights and obligations, which help them achieve their goals within the existing legal order. It is also important that the reliability of the information contained in the constitution cannot be replaced by any book.

The constitution is the most important means of social information, and the state uses it to bring certain information to all subjects of law. As T.N. Radko, "the information function is to a certain extent a subfunction, an element of the ideological (educational) function. The information capacity of law is one of the existing factors that make it possible to attribute it to the elements of the spiritual culture of society. ... Having arisen as a regulator of social relations, law simultaneously begins to play the role of an informer of their subjects" [2, p. 68]. Thus, the constitution, not having the original purpose to perform an informational function, objectively, along with its purely legal tasks, displays informational qualities, influencing the will, consciousness, and psyche of people.

This situation is very typical for the United States, where the Constitution is not only a historical monument, a source of information about the political events of the 18th century, but is also naturally considered the most important part of the country's cultural heritage. And this allows us to conclude that even existing documents can perform a historical and cultural function. In this regard, the German jurist J. Isensee emphasizes that "constitutional law is not only the result of the codification of fundamental norms, but also, as it were, the codification of their links with the past, which give these norms meaning, content, form and effectiveness" [3, p. 12].

A clear illustration is the provision of the Preamble of the Belarusian Constitution: "We, the people of Belarus, ... relying on the centuries-old history of the development of the Belarusian statehood ...". Article 16 of the Basic Law says that "the relationship between the state and religious organizations is regulated by law, taking into account their influence on the formation of the spiritual, cultural and state traditions of the Belarusian people" (our italics – A.P.). Among the duties of an individual there is the following: "Everyone is obliged to protect the historical, cultural, spiritual heritage and other national values" (Article 54 of the Constitution). All this indicates that the Constitution is an element of the national culture and in its normative form accumulates the spiritual values and achievements of the people of Belarus: democracy, human rights, moral principles of society, religious tolerance, the idea of social justice.

It should not be forgotten that Belarus has a much larger cultural and historical heritage than the United States. These are the letters-privilei of the period of the Principality of Polotsk, the Statutes of the Grand Duchy of Lithuania, the constitutional legislation of the era of the Commonwealth and much more. Therefore, such provisions in the Constitution are not for "red words", at the dawn of sovereignty for the authors of the Constitution of 1994 they played the role of a powerful moral factor, recalling the times of lost independence, the European path of development of our people. It is generally recognized by all scientists that the Statutes of the Grand Duchy significantly influenced the law of many European states of the 16th-17th centuries, and the Old Belarusian language (the Statutes are written in it) expressed as clearly as possible all the subtleties of legal concepts and structures.

This approach to the creation of modern texts of constitutions is quite common in the world, it

demonstrates the centuries-old experience of lawmaking, instills certain cultural traditions. In addition, the social experience transmitted by a legal document helps to avoid the mistakes of the past and improve the current legislation.

Undoubtedly, a good constitution has an integrating effect on the people of a given state, it not only informs the subjects about something, but also forms public consciousness, contributes to the creation of public opinion and the development of collective decisions. Therefore, the constitution has a communicative function. It is in many respects “consonant” with information, because it is in the communicative and information component that the life of any document, its impact on social relations, is manifested.

It is believed that a normative legal act will be used when its provisions begin to be embodied through the active behavior of subjects. However, for the implementation of an act, it is not always necessary that the subject be aware of its norms. In the Belarusian legal system, there is a presumption of knowledge of the law and the truth of a normative legal act. Therefore, despite the fact that in reality many citizens of the country did not get acquainted with the text of the Constitution, it is believed that they know its content. The communicative function of the constitution is extremely important for those societies that, according to K. Popper, are considered to be “open”. It is there that the main law plays the role of the most important consolidating and integrating mechanism.

In view of the fact that the constitution fixes the strategic goals and objectives of the development of society and the state, we can agree with the opinion of V.O. Luchin that the fundamental law as “the highest political and legal landmark [acts] as a means and method of social orientation (our italics – A.P.) [4, p. 37]. Therefore, the consolidating, integrating and orienting mechanisms of the constitution most fully reveal its communicative essence.

The functions of the constitution express the most essential, main features of the law of a particular society at a certain stage of its development. Therefore, when identifying the functions of the constitution, one should take into account their close connection with the social purpose and essence of law: to regulate and consolidate social relations, to provide them with proper protection and protection. This manifests itself the most important general social function of the constitution. Of interest is the interpretation of the social function of the legal document by K.V. Kargin [5, p. 50]. Somewhat interpreting what the author expressed in terms of the constitution, one can notice the following. The Basic Law is a socially significant object, as it is generated by a social need. It implements the most important social needs of society as a whole, collectives and individuals.

The Constitution of Belarus, for example, proclaims the principle that our country is a social state, whose policy is aimed at creating conditions for the free and decent development of the individual, a decent standard of living (Articles 1, 2, 21 of the Constitution). Therefore, all normative legal acts adopted in the state should be aimed at implementing this principle. In this regard, there is a constant improvement of legislation in the Republic of Belarus, where the Constitution is the basis for its development.

Understood in this way, the social function of the Basic Law will “overlap” with other functions, for example, law enforcement. It should be understood that the state provides a safe and dignified existence for all those members of society who lead a lifestyle consistent with the rule of law.

Here it is necessary to clarify the following. If we talk about the function of the constitution in the context of the problem of the development of a welfare state, then, nevertheless, such a “filling” of the function implies its interpretation not in the broad, but in the narrow, special sense of the word (when it comes to pension and family relations), medical and consumer services, the system of benefits and organization of leisure). In this case, given the fact that the purely social sphere of society is

constantly expanding, its importance is growing and the volume of legal regulation is increasing, we can agree with the opinion of T.N. Radko regarding the fact that “when dividing the social functions of law in accordance with the main spheres of society into economic, political and ideological, one should remember that the social function of law is also used in a narrow sense, that is, as a direction of legal influence on the actual social sphere of public life” [2, With. 70].

With such a "dualization", however, there is a certain inconvenience caused by the fact that the word "social" in its etymology is "public". So, the general social function of the constitution reflects the essential, main features of law in general, and the social function in its own (narrow) sense is to regulate the social sphere discussed above and ensure the social rights of subjects. But in the second case, it should already be considered in the system of particular functions of the basic law.

The function of social control as a direction of influence of the constitution should be distinguished from control and supervisory functions in the narrow sense of the word, implemented through acts of the prosecutor's office and regulatory authorities. This function is not considered by jurists as an independent function of the constitution (only V.N. Sinyukov speaks of the function of social control as a kind of general social function of law [6, p. 156]). Perhaps there is a point of view that it fits perfectly into the framework of educational, developmental and law enforcement functions (see, for example, V.M. Syrykh [7, p. 365]). But the question can be considered in another way.

The constitution has an impact on the behavior of subjects, on the one hand, as a means of stimulation, encouragement, on the other hand, restrictions (prevention from committing illegal actions) of one or another behavior (preventing the achievement of power by violent means, the creation of racist political parties, publications unconstitutional acts, encroachments on human life, interference in the activities of judges in the administration of justice, etc.). We emphasize that in this case we are talking about the general social mechanism of the functioning of the constitution, when special legal documents and levers of social control over the behavior of subjects are not yet used.

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