потребують будівництва та за рух через які буде сплачуватись плата; розробка процедури звільнення власників автотранспорту, які використовують платні дороги від сплати додаткового акцизу на паливо; запровадження договорів страхування об'єктів дорожньої інфраструктури та ін.

Ключові слова: *дорожня інфраструктура, автомобільні дороги, публічне адміністрування, форми публічного адміністрування, зарубіжний досвід*

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DECODING OF LEGAL FORMULAS OF THE FIRST CONSTITUTION OF THE RSFSR OF JULY 10, 1918: «ANTI-LEGAL» NATURE OF CONSTITUTIONAL NORMS

Abstract. Law is an achievement of human civilization, it is based on the system of natural human rights, the structural components of which are being deployed, detailed, supplemented by laws and other acts of state power. Therefore, the law does not pursue the goal of alienation of fundamental rights and freedoms through the laws of the country. The article considers the illegal provisions of the Constitution of the RSFSR of July 10, 1918.

The author substantiates the natural nature of property rights on the basis of historical examples, documents, actions and their consequences. An illustration of the violations of the laws of materialist dialectics and the realization of the scholastic ideas of the Bolshevik movement, which became the foundation for the construction of a despotic, totalitarian political system, is given.

Keywords: *Constitution; natural human rights; private property; political repression; illegal law*

Introduction. Legislative risks are one of the key problems of law, because a person or group of persons in whose hands the powers of the legislator are able to formally give legal effect to anti-legal norms created to ensure their personal interests that run counter to natural human rights and freedoms. Such norms are toxic, they are dangerous for society and cause indelible harm, entailing tragic consequences. However, the greatest threat is posed by anti-legal norms enshrined in the constitution, endowed with supreme legal force, and, consequently, like a virus capable of reproducing within each cell (norm) of tissue (institution), organ (industry) and thus affect the whole body of the law.

That is why the constitutional norms reflect the basic ideas, the initial provisions of law. By their nature, constitutional norms are irrational, they are invariant and are subject to decoding by means of subordinate legal acts: codes, laws, by-laws

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and acts of law enforcement. Thus, constitutions that consolidate irrational (eternal) ideas of law are not subject to change (French Declaration of the Rights of Man and of the Citizen; US Constitution), while subordinate legal acts are dynamic and depend on unique life situations, constantly changing objective reality, evolutionary transformation of cultural, political , economic formation of society.

The Constitution is the core of the national legal system, around which the other components are structurally integrated: industries, institutions, norms. The Constitution is the potential of the legal system, the vector of law-making and law enforcement activities of the state. Constitutional norms occupy a dominant position in the hierarchy of legal acts, in other words: no norm of a code, law, by-law or law enforcement act should contradict constitutional provisions. The Constitution determines the legal and political regime of the state, establishes the legal status of the individual. That is why lawyers, decoding constitutional formulas, assess states as «legal» or «non-legal».

Analysis of recent research and publications. When discussing the legal / non-legal nature of the first Constitution of the RSFSR of July 10, 1918, it is necessary to pay attention to the contradiction of its norms due to the binary opposition of legal and anti-legal provisions. Thus, along with the hyperbolization of the idea of «the destruction of all human exploitation by man», «universal labor duty is introduced», and «the elimination of the division of society into classes», equality, does not agree with the deprivation of «individuals and groups». This condition is due to the closure of the institution of private property, which created favorable conditions for the development of the virus in the body of law, affecting other cells, tissues and organs that ensure a healthy human life.

Property law is a natural right, it stimulates a person to work, allows you to realize your creative potential, meet physical and individual needs, makes a person free and independent. For example, in the diachronic aspect of law, the existence of property is identified with the recognition of legal personality, because a person without property becomes a slave, an inanimate object, a thing of his master.

With this aim, the Romans imposed excessively high taxes on the conquered territories in order to subsequently confiscate property for non-payment of taxes and thus turn free people into slaves (a law requiring the impossible). Lack of property rights excludes the right to extract income, benefit from the results of personal creativity, which is the main stimulus for effective labor, and, therefore, the stimulation of slave labor is always violence, coercive measures, repression (hunger, torture, deprivation of life).

Thus, the institution of private property allows a person to remain free and independent, to make decisions independently and be responsible for him, to own, use and dispose of the results of their own production, to improve the quality of their lives. Therefore, from the point of view of law, a natural consequence of the curtailment of property rights is the existence of conflicts in the form of «destruction of all human exploitation by man» and universal forced labor, the ideas of equality and social discrimination.

The formula: «lack of property = forced labor + low quality of production» is an axiom even for a child who assessed the events in the school essay, which became the property of a report by the head of the Alma-Ata regional Department of the People's Commissariat of Internal Affairs. In it (report note), as one of the examples, the essay of a 9th grade student of the 37th school Komarov Gennady is given, who wrote: «Dispossession took place in front of my eyes. I looked at it this way: a person lives, strives for the best, fights for a better life. This is the basis of his life. But a person is ruined, even taken thousands of kilometers to an unfamiliar area, where a person feels lonely, feels injustice. In addition, he is forced to work, to cut down the forest, which he does not know how to do at all» (L. Degitayeva, exec. ed., 1998, p. 1).

Pupil Komarov Gennady does not yet have life experience, an immature, naive, open child with a pure consciousness, intuitively arranging the natural order of human life. In the essay, as he develops, he discusses the natural, natural desire of a person to improve the quality of life, while he focuses on the fact

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that a particular person was not looking for easy money, did not acquire, did not appropriate property in an illegal, criminal way, but erected her hard, painstaking work. This work is compared by a schoolboy literally with a struggle for the basis of human life, which is cut down on the vine and severely punished by the state. Komarov Gennady makes an attempt to reflect the feeling of a person punished for his diligence, striving for better living conditions, feeling loneliness, outcast, injustice. The student appeals to the absence of objective reasons for the labeling of «kulaks» on a particular individual, to some extent he considers the actions of state bodies to be criminal, using the theses «ruin», «taken away a thousand kilometers to an unfamiliar area», «forced to work». A naive worldview allows the student to express on paper, in a school essay, a sense of injustice towards hardworking people, bewilderment why, instead of developing skills and professionalism that bring economic benefits to the state and society, such people, on the contrary, are ruined and forcibly forced to do what they are not able to.

In fact, the expropriation of private property proclaimed by the Constitution, which engulfed the industrial industry, mining and processing plants, the banking sector, mineral resources, land resources and others, led to an economic collapse. The «factories, factories, steamships» expropriated by the Soviet government, having lost their owner, quickly fell into decay and the Soviets had no choice but to declare a New Economic Policy (NEP). However, as soon as private capital reached the appropriate level («bulls gained a slaughter mass»), sufficient to start another confiscation campaign, «New October» immediately followed. This alternation of incentives for the development of private capital and confiscations continued until the «right of private ownership of the factors and conditions of production» passed into the exclusive «monopoly of the state», and a person who had lost his property turned into a «slave» (Zh. Abylkhozhyn, 1997).

This pattern is due to the fact that in addition to expropriation, in the process of usurpation of the structure of property relations, the experience of the Roman slave system was used. Thus, the encouragement of the development of private capital was accompanied by tax pressure (reminiscent of the institution of a quitrent), which led to popular resistance, since for a simple worker, not just property was at stake, but the means that could simply save his life. After all, the remainder of the tax payment, not only did not allow the development of production, but also ensure the minimum conditions for human survival (the law requiring the impossible). Accordingly, the policy of «abolition of all exploitation of man by man» and «universal equality» was accompanied by «proletarian coercion in all its forms, from executions to labor service», which created a «new form of» concentrated violence «(repression), transforming the «economic structure society» (N. Bukharin, 1989).

Already in 1937, a pupil of the same 37th school, but 10th grade Gorban asked the question in school conversations: «When will these shootings end? These will be shot, and then the right-wingers will be revealed and so there will be no end to the shootings» (L. Degitayeva, exec. ed., 1998, p. 40). The lasting «concentrated violence» does not fit into the rational thinking of the student, he cannot understand why the revolution that took place not only dragged on for such a long period, but also turned into an internal confrontation of like-minded people. His young age, lack of life experience and limited theoretical knowledge do not allow him to come to the understanding that each property always has a specific owner, and, therefore, the elimination of contradictions between the owner and the expropriator entails contradictions between those who usurped this property. That is why N. Bukharin, who promoted violent forms of proletarian coercion, was shot on March 15, 1938 (a universal property of law).

But unlike the schoolchildren, the expropriators themselves were well aware that the implementation of the speculative Leninist idea of «ration loyalty» (Decree «On the introduction of labor food rations» of April 30, 1920. Http://www.libussr.ru), in a practical way, would require more stringent measures forcing the working

class and peasants to «slave» labor service. It was for these purposes that L. Trotsky (1990) – an army was created and repressions were applied, and since the source of the food ration was the means of production of the peasant, he was imposed «a tax in kind in the form of bread on pain of merciless reprisal», which, according to L. Trotsky, developed the reflex of the peasant to alienate the ownership of the means of his production in favor of his older comrades, who were authorized to dispose of and distribute «common» property.

Thus, the class struggle does not form a cunning historical formula, where the labor of the worker is paid for by the labor of the peasant (plebeians), and their «revolutionary consciousness» is ensured by the army and repression, while the «privileged comrades» (patricians) embody the idea of «abolishing all exploitation man by man «and» universal equality». And here, based on the diachronic canons of law, the question involuntarily arises: did the Bolshevik elite classify the workers and peasants deprived of their property rights, which entailed a de facto ban on the appropriation of the means of their own production, whose labor was stimulated by poor food and means of coercion (by the army and repression), the Bolshevik elite to the category «human»? Was the idea of «abolishing all exploitation of man by man» concerned with this category of citizens or was their constitutional niche «universal labor service»? We believe that everyone will find the answers to these questions in his own conscience. Although, in fact, the idea of full / inferior citizens was clearly reflected in the constitutional norms of the country of the Soviets.

Supporters of the materialist dialectic could not help but realize that the abolition of property rights, gradual, widespread expropriations would lead the country to economic collapse, food shortages, and hunger. They should have fully understood that their activities contradicted the dialectical law of the transition of quantitative changes into qualitative ones (from the standpoint of economic development). In particular, large Bai farms allowed small producers to develop and remain in abundance. The surplus of tools and means of production made it possible for the big bays to give them for the use of other communities, which appropriated the results of their own labor. For example, for grazing Bai cattle, obtained for use to maintain the technological optimum, the communities retained such means of production as wool and milk, from which they could create other types of products. The big buys retained the ownership of his livestock and offspring. Such relationships were not charity and the interests of the big bai dominated them, but they were beneficial for communities with a low concentration of livestock. Accordingly, the ruin of the big buy led to the ruin of the rest of the cattle-breeding societies. The same applies to the distribution of land resources among the poor, the absurdity of this idea lies in the fact that the poor do not have elementary instruments and means of production, and therefore: what should he do with this land and how to pay tax on it? And on the contrary, referring to the experience of the capitalist countries, the dialectical law of the transition of quantitative changes into qualitative ones transformed the «bourgeois» «into a» plowman «in the field of management and marketing», and the «proletarian» – «into the owner of a capitalist enterprise through the acquisition of its shares» (Zh. Abylkhozhyn, 1997, p. 86).

So, the natural character of the human right to property is immanently interdependent with the inalienable rights to life, legal personality, personal freedom and inviolability, the satisfaction of natural needs and human needs. In this regard, arguing about the legal / non-legal nature of constitutional provisions and acts of their implementation, aimed at stopping property rights, expropriation, social and other discrimination, these provisions should be compared with natural, fundamental, humanitarian human rights. After all, law as a living organism, which is in the binary opposition of the pathogen and the immune system, including brought to immunological tolerance, is capable of regenerating, restoring its tissues with the help of genetic markers – the system of natural human rights.

In particular, the inalienable nature of property rights is hidden in the norms

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of criminal law. The first Criminal Code of the RSFSR dated June 1, 1922, provides for criminal liability for violation of the order of property relations. The criminal law protects private, public and state property, recognizes secret (theft) and open forms of theft (robbery, robbery) as criminal. At the same time, a qualifying sign of open forms of theft is the use of violence that is not dangerous to the life and health of the victim (robbery), or, on the contrary, threatening death or injury (robbery). However, any crime becomes more dangerous if it is committed by an organized and group of persons. The criminal law provides for the strictest liability for the commission of a robbery by a gang, i.e. by an armed group of persons (banditry).

Consequently, if we consider constitutional expropriation from the standpoint of criminal law, then the line between criminal and legal violation of the natural structure of property relations becomes a law that gives the disposition of the corpus delicti of a kind of blanket character, excluding the signs of a crime by a constitutional norm, if it is committed by an appropriate (legalized) armed group. In other words, there is a modeling of a specific state monopoly on the commission of crimes, the property of the generally binding nature of law is alienated, and with this the very legal nature of constitutional provisions.

The purpose of our article is to decode the legal formulas of the first Constitution of the RSFSR of July 10, 1918.

Formulation of the main material. The modern process of verification of the legal/non-legal nature of legislative norms is greatly simplified due to the development of a culture of legal technology, the consolidation of markers, objective criteria of the irrational component of law at the international conventional level. Due to the fact that the generally recognized system of natural human rights received its material expression at the level of international legal documents, speculative reasoning that «law is the will of the ruling class elevated to law» have lost any meaning. Thus, the constitutional provisions on the termination of private property, general labor service (reminiscent of the institution of corvee), social discrimination contradict the provisions: Forced or Compulsory Labor Convention of June 28, 1930; Universal Declaration of Human Rights of December 10, 1948; International Covenant on Economic, Social and Cultural Rights of December 16, 1966; International Covenant on Civil and Political Rights of December 16, 1966.

Based on the content of these legal documents of international law, the constitutional provision on universal labor service falls under the characteristics of the concept of slavery. The natural state of a person's personal freedom presupposes a ban on his maintenance in servitude, forcing him to forced or compulsory labor (Universal Declaration of Human Rights. Https://www.un.org; International Covenant on Civil and Political Rights), since this concept («forced or compulsory labor») includes any type of work or service performed under the threat of punishment, excluding the possibility of voluntary provision of their services (Conventions concerning forced or compulsory labor, 1989). At the same time, the concept of «forced or compulsory labor» does not apply to individual, private situations, for example, those associated with emergencies (fires, floods, famines, etc.). In this regard, in relation to the historical period of the formation of the Soviet state, compulsory cultivation of the land could take place in order to prevent hunger or lack of food products. However, a prerequisite for such coercion is the guarantee of the inviolability of the sacred right of ownership of the producer to the results of his own labor, agricultural products, food (Conventions concerning forced or compulsory labor, 1989, p. 16).

Thus, the right to property and the institution of slavery from the standpoint of the historical world experience, which has found its consolidation in the conventional norms of public international law, are markers of the dichotomy of freedom and servitude. It must be assumed that this is one of the reasons why the inalienable nature of property rights is established by Article 17 of the Universal Declaration of Human Rights, which forms the general system of natural human rights.

One of the forms of eliminating the contradiction between the right of

ownership and the institution of slavery is the right to work, which is expressed in the provision of an opportunity for each person to «earn his living by work that he freely chooses or to which he freely agrees» (International Covenant on Economic, Social and Cultural Rights). In this regard, everyone has the right to receive fair remuneration for work sufficient to meet the vital needs of the employee and his family members, including payment for holidays and periodic vacations. Working conditions must be safe and meet the requirements of hygiene, and working hours are reasonably limited, with the provision of time for the restoration of spent energy resources of a person, rest and leisure, and cultural development. It should be noted that the natural right of every person to an adequate standard of living, including family members, is not limited to the appropriate rationing of food, clothing and housing, but also implies continuous improvement of conditions and quality of life (International Covenant on Economic, Social and Cultural Rights).

The systemic component of these provisions is the immanent property of law – «equality», the prohibition on the manifestation of any discrimination in all forms of manifestation of social interaction. The prohibition of discrimination must be explicit, rational and constitutional. No person should be subject to restrictions in economic, political, civil, cultural, social and other rights, based on any distinctive features: race, color, sex, language, religion, political or other beliefs, national or social origin, property, class or other status, birth or other circumstance (Universal Declaration of Human Rights. Https://www.un.org; International Covenant on Civil and Political Rights, p. 53, 55; International Covenant on Economic, Social and Cultural Rights, p. 49-50).

Conclusions. So, law is an achievement of human civilization, it is based on the system of natural human rights, the structural components of which are deployed, detailed, supplemented by laws and other acts of state power. Consequently, the law does not pursue the goal of alienation through the laws of the country of fundamental human rights and freedoms, arresting certain elements of the system of natural human rights, deterioration of the quality, conditions of his life, therefore such laws are categorized as «illegal».

Decoding the legal formulas of the first Constitution of the RSFSR of July 10, 1918 allows us to come to the conclusion about the non-legal nature of its provisions, due to violations of the system of natural human rights and the inherent properties of positive (dogmatism) law (Constitution (Basic Law) of the RSFSR). Demonstration of the implementation of such provisions, using the example of specific historical experiences, proves that the arrest of private property and the introduction of universal labor service leads to similar actions (reactions) and consequences that took place during the period of the slave system. Accordingly, in the historical period we examined, there were tendencies of a sharp decline in the economy, food shortages, interconnected with the violation of the structure of free labor relations, disinterest in labor and the use of qualified personnel for types of work that are not typical for them.

The markers of legal law are the system of natural human rights, the components of which are in constant interaction with each other. The emasculation of any element of the system leads to a violation of its integrative properties, the integrity of a harmonious structure, and, therefore, depending on the amount of damage caused, such actions lead to the destruction of the system, its functional purpose. For this reason, the cupping of at least one element of the system of natural human rights determines domination, the dominance of anti-legal norms and laws.

The anti-legal provisions established by the first Constitution of the RSFSR and enshrined in practical activities will become the fundamental ideology of an unshakable totalitarian society that alienates the right to inviolability of private property and practices a reactionary, penal, repressive policy in the field of criminal justice (which will be discussed in the next paragraph).

Conflict of Interest and other Ethics Statements
The author declare no conflict of interest.

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Віталій Хан

ДЕКОДУВАННЯ ЮРИДИЧНИХ ФОРМУЛ ПЕРШОЇ КОНСТИТУЦІЇ РСФСР ВІД 10 ЛИПНЯ 1918 РОКУ: «АНТИПРАВОВИЙ» ХАРАКТЕР КОНСТИТУЦІЙНИХ НОРМ

Анотація. Право є досягненням людської цивілізації, воно ґрунтується на системі природних прав людини, структурні компоненти якої розгортаються, деталізується, доповнюються законами та іншими актами державної влади. Отже, право не має на меті відчуження через закони країни фундаментальних прав і свобод людини, купірування окремих елементів системи природних прав людини, погіршення якості, умов його життя, тому подібні закони відносяться до категорії – «неправові». У статті розглядаються антиправові положення Конституції РСФСР від 10 липня 1918 р. На історичних прикладах та документах автором обґрунтовується природний характер права власності. Наводиться ілюстрація порушень законів матеріалістичної діалектики та реалізації схоластичних ідей більшовицького руху, що стала фундаментом для будівництва деспотичної, тоталітарної політичної системи.

Розшифровка юридичних формул першої Конституції РСФСР від 10 липня 1918 р. дозволяє прийти до висновку про неюридичну природу її положень, обумовленої порушенням системи природних прав людини. Демонстрація реалізації таких положень на прикладі конкретного історичного досвіду доводить, що подібні наслідки мали місце в період рабовласницького ладу. Відповідно, у досліджений автором історичний період, спостерігалися тенденції різкого занепаду економіки, дефіциту продовольства, що взаємопов'язано з порушенням структури вільних трудових відносин, незацікавленістю до праці та використанням кваліфікованих кадрів для тих видів робіт, які не характерні для них. Маркерами юридичного права є система природних прав людини, складові якої перебувають у постійній взаємодії. Виокремлення будь-якого елементу системи призводить до порушення його інтегративних властивостей, цілісності гармонійної структури, а отже, залежно від розміру заподіяної шкоди, такі дії призводять до руйнування системи.

Ключові слова: *Конституція; природні права; приватна власність; політичні репресії; неправовий закон*

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