DOI: 10.24234/wisdom.v1i1.676
Vladislav PANCHENKO,
Ivan MAKARCHUK,
Valery VLASENKO,
Nadezhda ALEKSEEVA,
Natalya FROLOVA

V. S. NERSESYANTS' POLITICAL AND LEGAL IDEAS ABOUT THE RULE OF LAW STATE AND THEIR REFLECTION IN THE CONSTITUTION OF THE RUSSIAN FEDERATION AND THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

Abstract

Since the inception of the idea of the rule of law state, the problems of its formation and development have always been in the focus of attention of progressive countries, as well as humanities scholars. During the years of perestroika, for the purposes of prospective legal construction, V. S. Nersesyants formulated the distinctive features and components of the rule of law state, without which the existence of the rule of law state is impossible. Well-known historical events led to the beginning of the formation of a new legal space on the territory of the Russian Federation and the Republic of Armenia, which is primarily due to the adoption of basic laws - the Constitutions of these countries. This article examines the political and legal views of V. S. Nersesyants about the rule of law state. The analysis revealing the reflection of his ideas in the Constitution of the Russian Federation and the Constitution of the Republic of Armenia is carried out.

Keywords: V. S. Nersesyants, Constitution of the Russian Federation, Constitution of the Republic of Armenia, law, rule-of-law state, libertarian-legal theory of law, G. V. F. Hegel.

Introduction

Sixteen years have passed since the death of the outstanding Russian jurist of Armenian origin, Vladik Sumbatovich Nersesyants (1938-2005). At the same time, interest in his creative legacy has remained inexhaustible all these years. One of the factors of the intellectual and spiritual significance of the impact of the master's heritage on the minds of today's generation of legal theorists and philosophers is the holding (since 2006) of annual Philosophical and Legal readings in memory of Academician V. S. Nersesyants at the Institute of State and Law of the Russian Academy of Sciences, the topics of which are inextricably linked with the field of scientific and personal research of the scientist, for example, law and society in an era of change (Grafsky, 2008), standards of scientific and homo juridicus in the light of the philosophy of law (Grafsky, 2011), current areas of analysis of law and jurisprudence: the problem of interdisciplinary understanding and cooperation (Grafsky, 2015), law enforcement as art and science (Grafsky, 2016), law and literature (Grafsky, 2014), modern state and personality in historical and philosophical-legal understanding (Grafsky, 2018).

In 2009, the Yerevan publishing house "Nzhar" published a landmark memory book dedicated to Vladik Sumbatovich Nersesyants (Lapaeva, 2009), compiled by the widow of the sci-

entist, Doctor of Law, chief researcher of the Institute of State and Law of the Russian Academy of Sciences Valentina Viktorovna Lapaeva. This work, along with the memoirs of V. S. Nersesyants of his relatives and colleagues, contains fragments of his unpublished philosophical essays, among other things, fragments of his unpublished philosophical essays ("On Mood", "On theogony", "On Myths", "On Neology", "On Law (on the origin of equality"), "Reason as creativity" and others), but also some philosophical and poetic works, as well as a work of programmatic content "The national idea of Russia in the world-historical progress of equality, freedom and justice. Manifesto on Civilizationism, in which the scientist used the concept of "rule-of-law state", pointing out that a civil state of the law is designed to protect the civil system, protect "the system of civil property and properly ensure its normal functioning together with members of society and their elected officials".

Since further, we will refer to the Constitution of the Russian Federation and the Constitution of the Republic of Armenia, and it is necessary to make brief historical explanations. According to the fair remark of Russian constitutionalists, 2020 entered the history of state-legal construction of Russia with the largest constitutional reform in modern domestic constitutional practice. In 2020, the fifth amendment to the Constitution of the Russian Federation was adopted – for the period of validity of the modern Russian Constitution, adopted on December 12, 1993. The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation dated March 14, 2020, No. 1-FKZ "On Improving the Regulation of Certain Issues of the Organization of Public Power" has become an important state-legal means of developing the Basic Law of the Russian Federation. These circumstances stimulate dynamism in the development of the rule of law and civil society, entail a new stage of updating constitutional legislation, determine new directions of institutional reform.

On December 6, 2015, the draft amendments to the Constitution of the Republic of Armenia were approved at the constitutional referendum of the Republic of Armenia, which actually meant the adoption of the fourth Basic Law of the country. With the adoption of the new Constitution, the transition of the republic from a semi-presidential form of government to a parliamentary one began, which ended on April 9, 2018, when the fourth, current President of the Republic of Armenia, A. V. Sargsyan, took office (Balayan, 2017).

Methodology

In the preparation of this article, general and special legal methods were used. General methods of scientific cognition (analysis and synthesis, generalization, comparison, system-structural and functional analysis, concretization, logical, systemic and historical approaches) allowed the authors to make a brief overview of the scientific heritage of V. S. Nersesyants, to identify the main directions of the scientist's creative research, to reveal the originality of V. S. Nersesyants' views on the rule of law in the history of political and legal thought. With the help of special legal methods (normative-dogmatic and formal-legal methods), the conceptual features of the content of the concept of the "rule of law", the meaning and role for its formation of "people's sovereignty", legal legality and independence of the judicial system, as well as the peculiarities of the interpretation of the Hegelian understanding of the rule of law by the scientist were isolated from the works of V. S. Nersesyants.

The Concept of "Rule of Law" and the Idea of "People's Sovereignty"

According to Nersesyants in modern usage and meaning, the rule of law (Rechtsstaat) can be viewed in two following planes. Firstly, the rule of law is observed as a special concept of the rule of law. Secondly, the rule of law as a structure of

a state developed in the legal sense - a constitutionally formalized liberal-democratic state, the formation of which is socially and historically connected with the development of civil society and constitutional-legal forms of organization of public power; the legal form of organization and activity of public-political power and its relationships with individuals as subjects of law. At the same time, the conceptual and applied aspects of the rule of law are in an inextricable triune interaction with each other and are represented by the following legal blocks: the humanitarian block (the fundamental rights and freedoms themselves), the normative (fixation of the rule of law in the sources of law), the institutional (formed by the classical system of checks and balances in the system of separation of powers) (Nersesyants, 2008).

The rule of law is intangible without the following distinctive features.

Firstly, it is necessary to have the rule of law fixed at the constitutional level. Within the framework of this feature, the law is positioned as a special social phenomenon, independent of the will of the legislator, with its objective properties and regulatory principles, and the law as a set of officially authoritative institutions, generally binding acts and norms endowed with enforcement force. In modern constitutions, this feature finds its embodiment by recognizing a person, his rights, freedoms and legitimate interests as the highest value. Thus, Article 2 of the Constitution of the Russian Federation establishes that universally recognized rights and freedoms, as well as the person himself, are the highest value, and their continued recognition and protection is a direct and immediate duty of the state. Article 3 of the Republic of Armenia also provides that a person is of the highest and inalienable value. It is the inviolability of human dignity, respect for rights and freedoms, as well as comprehensive assistance in their implementtation that is the ontological basis of the legitimacy of public power.

Such an approach in the Constitutions of the states under consideration best confirms the thesis of V. S. Nersesyants that it is impossible to achieve such development of civil society that would become the real basis of the rule of law without a free person protected by law. This interconnection, interdependence and interdependdence in the development of the individual, society and the state should occupy a priority position in the ideology of the rule of law (Nersesyants, 1989).

Secondly, the reality of the rights and freedoms of individuals cannot exist without proper reinforcement of the rule of law by law-securing mechanisms. According to this feature, the effective functioning of the rule of law requires the existence of a legal form and the legal nature of the interactions of state authorities and local self-government with subjects of law, with the condition of recognition and proper guarantee of the rights, freedoms and legitimate interests of all participants in legal relations.

For example, article 19 of the Constitution of the Russian Federation establishes that the State guarantees equality of rights and freedoms regardless of any personality characteristics and circumstances; at the same time, the inadmissibility of any restrictions and infringements is naturally established. Accordingly, in order to ensure the implementation, including of these rights, the Constitution establishes the legal status of law enforcement agencies. Also, very effective and effective mechanisms for the protection of citizens are provided for in Chapter 2 of the Constitution of the Republic of Armenia: in case of violation of rights, citizens can use Article 52 of the Constitution, according to which citizens have the right to apply to a Human Rights Defender for assistance in protecting their rights. Article 191 of the Constitution of the Republic of Armenia corresponds to this right, which postulates that a human rights defender is an independent official responsible for the relevant area of legal life and is obliged to assist citizens in restoring violated rights and freedoms.

Thirdly, the provision that the actual principle

of separation of powers is the real basis for the activities of sovereign State power. The implementation of the above positions will be impossible without constitutional regulation of sovereign state power in accordance with the principle of separation of powers. This principle is a litmus test of the development of law and the state, an indicator of the effectiveness of the institutions of the rule of law, as well as a platform for the subsequent development of legal statehood (Nersesyants, 1989). Article 10 of the Constitution of the Russian Federation provides that power in the Russian Federation is exercised by three independent and independent branches, namely: legislative, executive and judicial. Article 4 of the Republic of Armenia also establishes the principle of separation and balance of powers.

A significant place in the concept of the rule of law, according to the views of V. S. Nersesyants, should be occupied by the idea of national sovereignty. Only this phenomenon can act as the basis and source of the formation of real sovereignty. It is the people who have the inalienable right to establish and modify the forms and content of their right and the entire social, political and legal existence. Consequently, it is precisely from this sovereignty that the sovereignty of the rule of law is derived as a cumulative unity of powers and powers, wholly belonging to the people of the country concerned, covering the territory of the state with its action and determining the political and legal norms of public life. Accordingly, the development and establishment of State sovereignty are unthinkable without strengthening the foundations of the rule of law (Nersesyants, 1989). It should be noted that the ideas of national sovereignty are fully reflected in the Constitution of the Russian Federation and in the Constitution of the Republic of Armenia.

The Principle of Legal Legality and the Independence of the Judicial System

V. S. Nersesyants assigned a special place in the theory and practice of the rule of law to the observance of the principle of legal legality. The very name "rule of law" implies the presence of legality in it, expressing the ideas of the rule of law, contributing to the spread of respect for legislation in general and legal norms in particular.

The Constitutions of the Russian Federation and the Republic of Armenia contain generally recognized legal principles reflecting the guarantees of legal legality.

V. S. Nersesyants (1989) attached great importance to the creation of an effective legal mechanism for the objective, fair and timely resolution of disputes and conflicts between various subjects of legal communication, including the judicial mechanism.

The Constitution of the Russian Federation provides for a set of legal mechanisms that allow individuals and legal entities to effectively resolve various kinds of disputes and legal conflicts. This complex is expressed by such concepts as the ability to protect their rights and freedoms in all ways not prohibited by law; the guarantee of judicial protection; the possibility of appealing against power decisions of any level (for example, articles 45, 46, 118-128).

The Constitution of the Republic of Armenia stipulates the right to petition, the right to judicial protection, including at the international level, the right to receive legal assistance (for example, articles 53, 61, 64).

At the same time, V. S. Nersesyants (1989) prophetically noted the significant role of constitutional justice since the proper implementation of the powers of the judiciary is impossible without an effective and well-established mechanism of constitutional and legal control over the issued normative legal acts. Constitutional courts have been established in the Russian Federation and the Republic of Armenia in order to ensure the supremacy of Constitutions and to empower these courts with the powers of the supreme judicial body of constitutional control.

V. S. Nersesyants' Interpretation of the Hegelian Understanding of the Rule of Law

The area of scientific interests of V. S. Nersesyants was inextricably linked with the name of the German philosopher G. V. F. Hegel (Nersesyants, 1975). V. S. Nersesyants (1986) is the author of two dissertations on jurisprudence devoted to Hegel, many articles and monographs on this topic, including in Armenian. He was also the compiler, author of the introductory article and notes to the updated academic edition of Hegel's Philosophy of Law (Hegel, 1990).

According to Nersesyants, "the Hegelian state as a moral whole not only has an absolute right in relation to its constituent moments but is itself a right in its developed integrity". Accordingly, the rule of law should be considered not as an ephemeral wish and dream but as a concept (idea) and concrete legal practice. At the same time, Hegel gives the status of an organically structured and legally verified process to the legal interaction of elements of the legal system and the functioning of the rule of law, in which each subject of law enjoys his rights, duties and legitimate interests (Nersesyants, 1998).

At the same time, V. S. Nersesyants rightly notes "the specific meaning of the Hegelian philosophical concept of the state," therefore, many researchers misinterpret Hegel's political and legal views. For the German thinker, the main role in a state governed by the rule of law should belong to the idea of freedom and the rule of law, and the people should be independent and free participants in legal life. Only in such a State can the idea of the State, consisting in the "real realization of the concept of law", be fully revealed. The sovereignty of the people and the state serve as a guarantee of the "legality of state autocracy", which protects society from violence and legal arbitrariness (Nersesyants, 1998).

Based on the analysis of the voluminous material presented by primary sources, foreign literature and Russian studies of Hegel's philosophy and related fields, V. S. Nersesyants (1998) reasonably came to a conclusion that "the whole Hegelian construction of the rule of law is directly and unequivocally directed against arbitrariness, disenfranchisement and in general all extralegal forms of the use of force".

Conclusion

Ideas concerning the political and legal structure of the rule of law occupy a significant place in the libertarian-legal theory of law developed by V. S. Nersesets and is an independent direction of philosophical and legal thought. The conclusions of V. S. Nersesyants, obtained by him during the historical and legal analysis of the rule of law and devoted to the identification of the meaning, principles and features inherent in this form of organization and functioning of public political power remain relevant to the present time.

V. S. Nersesyants has repeatedly noted that the theory and practice of building a legal state are inseparable from each other. This means that legal states cannot appear in a mechanistic and synthetic way since legal statehood always reflects not only the real level of legal progress but also historically determined forms of interaction between state institutions and society, respectively, the formation of legal statehood is a complex and lengthy process.

The analysis of the reflection of the political and legal ideas of V. S. Nersesyants on the rule of law in the Constitution of the Russian Federation and the Constitution of the Republic of Armenia allows us to conclude that these states are legal, which reflects their current level of legal development and legal life, are in continuous legal evolution, as evidenced by the ongoing constitutional and other legal reforms.

The construction and development of legal statehood should be a priority goal of modern states. This requires regular updating of the entire complex of existing regulatory legal acts and modernization of public and state institutions,

which, as phenomena of historically developing legal reality, share their achievements and shortcomings and are always far from ideal.

References

Balayan, G. K. (2017). Konstitutsionnoye Reformirovaniye Sub'yektov Gosudarstvennogo Kontrolya v Respublike Armeniya (Constitutional Reform of Subjects of State Control in the Republic of Armenia, in Russian). Konstitutsionnoye i Munitsipal'noye Pravo (Constitutional and Municipal Law, in Russian), 3, 73-80.

Grafsky, V. G. (Ed.). (2008). *Pravo i obshchestvo v epokhu peremen: materialy filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (Law and society in an era of changes: Materials of philosophical and legal readings in memory of Academician V. S. Nersesyants, in Russian). Moscow: Norma.

Grafsky, V. G. (Ed.). (2011). *Standarty nauchnosti i homo juridicus v svete filosofii prava: materialy pyatykh i shestykh filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (Scientific standards and homo juridicus in the light of the philosophy of law: Materials of the fifth and sixth philosophical and legal readings in memory of Academician V. S. Nersesyants, in Russian). Moscow: Norma.

Grafsky, V. G. (Ed.). (2014). *Pravo i literatura: materialy vos'mykh filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (Law and literature: Materials of the eighth philosophical and legal readings in memory of Aca-demician V. S. Nersesyants, in Russian). Moscow: Norma.

Grafsky, V. G. (Ed.). (2015). *Aktual'nye napravleniya analiza prava i pravovedeniya: problema mezhdistsiplinarnogo ponimaniya i sotrudnichestva: materialy devyatykh filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (Current trends in the analysis of law and jurisprudence: The problem of interdisciplinary understanding and cooperation: Materials of the ninth philosophical and legal readings in memory of Academician V. S. Nersesyants, in Russian). Moscow: Norma.

Grafsky, V. G. (Ed.). (2016). *Pravoprimeneniye kak iskusstvo i nauka: materialy desyatykh filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (Law enforcement as art and science: Materials of the tenth philosophical and legal readings in memory of Academician V. S. Nersesyants, in Russian). Moscow: Norma.

Grafsky, V. G. (Ed.). (2018). *Sovremennoye gosudarstvo i lichnost' v istoricheskom i filosofsko-pravovom osmyslenii: materialy dvenadtsatykh filosofsko-pravovykh chteniy pamyati akademika V. S. Nersesyantsa* (The modern state and personality in historical and philosophical and legal comprehension: Materials of the twelfth philosophical and legal readings in memory of Academician V. S. Nersesyants, in Russian). Moscow: Norma.

Hegel, G. V. F. (1990). *Filosofiya prava* (Philosophy of law, in Russian). Moscow: Thought.

Lapaeva, V. V. (Ed.). (2009). *Vladik Sumbatovich Nersesyants* (Vladik Sumbatovich Nersesyants, in Russian). Yerevan: Nzhar.

Nersesyants, V. S. (1975). *Politiko-pravovaya teoriya Gegelya i yeye interpretatsii* (Hegel's political and legal theory and its interpretations, in Russian) (Doctoral Dissertation, USSR Academy of Sciences, Moscow, Russia).

Nersesyants, V. S. (1989). *Pravovoye Gosu-*

darstvo: Istoriya i Sovremennost': history and modernity (Legal state: History and modernity, in Russian). *Problemy filosofii* (Problems of Philosophy, in Russian), *2*, 3-16.

Nersesyants, V. S. (1998). *Filosofiya prava Gegelya* (Hegel's philosophy of law, in Russian). Moscow: Lawyer.

Nersesyants, V. S. (2008). *Filosofiya prava* (Philosophy of law, in Russian). Moscow: Norma.

Nersesyants, V. S. (1986). *Hegel* (Hegel, in Armenian). Yerevan: Yerevan University Publishing House.