

The Issue of Establishing the Republic of Armenia as a Legal State

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ՀՀ իրավական պետության կայացման հիմնախնդիրները Հակոբջանյան Արման Վ.

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Անփոփագիր. Սույն հետազոտությունը նվիրված է Հայաստանի Հանրապետության՝ որպես իրավական պետության կայացման արդի հիմնախնդիրների և զարգացման միտումների ուսումնասիրությանը: Իրավական պետությունը շարունակ զարգացող երևույթ է, ինչն էլ իր հերթին պահանջում է նորոպի ուսումնասիրություններ, նոր խնդիրների բացահայտում, առաջարկությունների մշակում ու կենսագործում: Սույն հետազոտությամբ անդրադարձ է կատարվել իրավական պետության հիմնական հատկանիշներին և սկզբունքներին, ներկայացվել են Հայաստանի Հանրապետությունում իրավական պետության տարրերի ամրապնդման հարցում առկա խոչընդոտները և առաջարկվել են լուծման որոշակի քայլեր:

Հանգուցաբառեր՝ իշխանության տարանջատում, իրավունքի գերակայություն, իրավագիտակցություն, քաղաքացիական հասարակություն, իրավական մշակույթ

Проблемы образования Республики Армения как правового государства

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Аннотация. Это исследование посвящено изучению актуальных проблем и тенденций развития Республики Армения как правового государства. Правовое государство – постоянно развивающееся явление, что в свою очередь требует новых исследований, выявления новых проблем, разработки и реализации рекомендаций. В этом исследовании были рассмотрены основные черты и принципы правового государства, представлены препятствия в укреплении элементов правового государства в Республике Армения и предложены определенные шаги для решения.

Ключевые слова: разделение властей, правопорядок, правосознание, гражданское общество, правовая культура

Law plays an important role in the stability and development of the state. The outcome of the interrelated activity of the state with the law is the formation of a legal state, which, by ensuring the supremacy of the law, serves for the good of society. The legal state is an evolving phenomenon. In the conditions of the progress of social life, it acquires new properties corresponding to the special conditions of society's existence and its level of development. An enduring general principle of any legal state is its attachment to law. The legal state is a form of organization and activity of state power, which is built on the basis of the legal norm in relations with individuals and their various associations. Moreover, the law plays a primary role only when it acts as a measure of freedom for each

and everyone, the existing laws serve the interests of the people and the state, and their relationship is an embodiment of justice. Meanwhile, the developed legislation and the close cooperation of the state with the law don't indicate the existence of a legal state in the society.

The problem of building a legal state in modern Armenian society is very topical. This is explained by the fact that the rule of law is one of the fundamental principles of the Constitution of the Republic of Armenia. In particular, Article 1 of the Constitution of the Republic of Armenia claims that the Republic of Armenia is a sovereign, democratic, social and legal state [1]. Despite the establishment of the principle of the legal state in the Constitution of the Republic of Armenia, today it cannot be said

that Armenia is a full-fledged legal state. It is still in the process of forming such a state, that is being a legal state which is a goal that must be realized in the near future.

The path to establishing a legal state in the Republic of Armenia began a long time ago. The main principles of the legal state have been expressed in the Constitution of the Republic of Armenia. In particular, Articles 3, 4 and 6 of the Constitution enshrine the principles of protection of human rights and freedoms, separation of powers and legality, respectively. Basically, the above constitutional norms create a path to a stable legal state, while this path is controversial and difficult.

What are the reasons for the complexity of establishing a legal state in the Republic of Armenia?

- On the basis of the analysis of the text of the Constitution of the Republic of Armenia, it turns out that there is no clear and universal definition of the concept of "legal state", which makes it possible to use different interpretations related to it.

- The principles and norms fixed in the Constitution of the Republic of Armenia are mainly of a declaratory nature, while the idea of a legal state must be practically implemented by state bodies and officials. At the same time, the high level of corruption in the country and the violation of constitutional and other legal norms by the officials themselves do not allow us to talk about the rule of law, which is one of the main principles of the rule of law.

- Improving the legislation is one of the main problems of building a legal state. It is important that in the context of the quantitative and qualitative features of normative legal acts, priority should be given to the second.

- The level of legal awareness of the society correlates with the stability of the legislation due to the fact that in a legal state the society must have a developed legal culture [2].

- One of the problems is that the civil society in Armenia is still in the stage of formation, while the process of forming a legal state is accompanied by the creation of a civil society, and until the civil society is formed, the transition from the existing state-legal structure to the political regime of a complete legal state is impossible.

- The distinguishing feature of the legal state is the ability to ensure the implementation of laws with the participation of civil society, which helps to protect the rights and freedoms of the individual, and also creates the possibility of a fair settlement of conflicts.

- The low level of material security is also a serious problem. A state where there is an infinite

gap between the rich minority and the poor majority cannot claim a high degree of rule of law.

- Armenia's political system is in an unstable state, and the principle of separation of powers is not fully implemented.

- Many legal issues remain unresolved. In some cases, the rush to publish normative legal acts leads to their inconsistency with all legislation. This circumstance complicates the understanding and perception of the law, as well as the formation of stable legal traditions in the mass consciousness of society.

The current problems of the legal state are due to the peculiarities of the form of government, the inconsistent implementation of the principle of separation and balancing of powers, and not perfect solutions, as well as the low level of political and constitutional culture, the insufficient establishment of the party system. The task of the legal state is to create a full-fledged institution of the head of state with constitutional guarantees, strong and balanced legislative and executive power bodies, an independent and impartial court.

The recent history of RA constitutional developments proves that, for both objective and subjective reasons, the development of independent statehood has not reached such a milestone as to record that democracy is on firm foundations, human rights are reliably protected, an effective system of governance has been established, and the courts are independent and they are impartial. There are no guarantees ensuring the stable development of constitutional legal relations in RA.

The above-mentioned problems are considered to be the main gap in calling the Republic of Armenia a stable legal state. They can be overcome thanks to the implementation of certain fundamental ideas, which can be called the principles of establishing a legal state.

1). Supremacy of the law

It implies the simultaneous presence of at least three conditions:

a). the absence of arbitrary powers of the government to punish a person or to take certain actions against his life and property;

b). the subjection of every person to the laws of the State;

c). the supremacy of the spirit of law in the bodies of state power [3].

Law is the highest form of protection and organization of people's freedoms in the system of legal values. The state establishes general mandatory rules of conduct in the law, which must take into account the objective requirements of the development of social relations based on the principles of equality and justice. Under the rule of law, no state body, official, collective or public

organization, and no individual has the right to violate the law. They bear strict legal liability for its violation.

When we talk about the supremacy of the law as a normative legal act with supreme legal force, we must clearly emphasize that all sub-legislative acts must strictly comply with it. In this context, the rule of law is seen as the principle of legality. Legitimacy requires the unconditional observance of the law by all subjects of public relations, while the legal state presents such a requirement to state institutions performing the functions of public authority. Thus, legality and the legal state create legal legitimacy, which ensures the stability of a fair and legal order in society.

2). The truthfulness of rights and freedom for individuals and the existence of guarantees for their implementation.

The rule of law serves one common purpose: to ensure the enjoyment of individual rights and freedom. The implementation of human rights and freedom also implies the provision of a system of certain guarantees by the state government. A person should be sure that his rights are secured in any sphere of social relations. The guarantee of rights is perceived as a real possibility of their implementation and protection. It is ensured not only by the legislative fixation of rights, but also by the creation of mechanisms for the comprehensive protection of rights and freedoms and the establishment of legal responsibility for their violation. The main responsibilities of the state in this area are manifested in the context of recognition, preservation and protection of human rights and freedom. The recognition itself implies the establishment by the state of the human rights and freedom predicted by the universal norms of international law and derived from the natural-legal concept in all legislation. Protection requires that public authorities not only refrain from actions that violate human rights and freedom, but also create conditions for their implementation by people. Protection envisages active actions of judicial and administrative bodies to create appropriate guarantees, as well as to restore the violated right or to prevent such violation.

3). Mutual responsibility of the state and the individual.

The relationship between the state as the bearer of political power and the individual as a participant in its formation should be based on equality and justice. Having defined the extent of individual freedom in law, the state limits itself in its own decisions and actions within those same limits. This leads to the emergence of the phenomenon of the responsibility of the state to the individual. Meanwhile, the individual, in his turn, is responsible

before the state for not fulfilling his duties. In essence, compliance with legal requirements is the duty of both a person and the entire state, which excludes the manifestation of the state's arbitrariness during the regulation of public relations.

4). Separation of authority.

The main requirement of the concept of separation of powers is that in order to establish political freedom, ensure the rule of law and eliminate the abuse of power by an individual or any social group, it is necessary to divide the state power into legislative, executive and judicial branches.

Through the separation of powers, the state is organized and operates legally, which is a means of democratizing political life. Structural parts and elements of state power function in accordance with their intended purpose. Endowed with certain powers, each structural element of the legal state carries out its activities in accordance with the will of society, and each official is personally responsible for the violation of human rights and freedom guaranteed by the constitution and other normative legal acts. Basically, in legal state, whole government is free from bureaucracy and administrative methods of governance [4, p. 141]. Not only the division of labor between state bodies is expressed, but also the "moderation" of state powers and the delimitation of state power are ensured, preventing its concentration and transformation into authoritarian power.

The Republic of Armenia practically has the arsenal that will enable solving the problems faced by our state for the complete formation of a legal state, but due to deep contradictions in the political balance, its implementation is constantly on the verge of collapse. It is necessary to implement becoming legal state in stages, taking into account the historical and national characteristics of the country. Although modern Armenian society is still far from achieving the ideals of a legal state, moving in that direction is important and necessary. And for the establishment of a legal state, not only the state power, but also the effort and investment of the society and an individual is necessary.

We offer a system of certain steps for the establishment of a legal state:

- to improve the legal culture of the population in order to declare it part of the world civilization,
- to develop the legal culture of citizens, which will provide prospects for overcoming and finally eradicating legal nihilism,
- to form and maintain the economic potential, which can provide adequate level of material support to all citizens,

- ensure the principle of responsibility and professionalism in the work of law enforcement agencies and the judicial system,
- to overcome the obstacles that arise in the relations between the society and the state,
- direct all the potential of the state apparatus to the provision for the common good,
- bring society as close as possible to the system of state administration and law-making activities,
- to carry out law-making activities through the "use" of theoretical and practical knowledge of scientists-specialists in the relevant field,
- to base the idea of priority of human rights and freedoms on the basis of every normative legal act in the legislative system.

We believe that it is necessary to create more clear constitutional guarantees for the consistent implementation of the principles of the legal state and the implementation of a clear program policy. It is also necessary to consistently implement the constitutional principle of dividing and balancing the powers of a legal state, to strengthen the proper functioning and independence of various branches of government. In a legal state, the constitutionality of the goals and activities of political forces should not only be guaranteed, but also ensured. A person's conduct must be based on the principle of the the supremacy of the law . For the construction of a legal state, it is necessary for people to be sure that they can protect their rights and interests legally if necessary. It should be emphasized that the legal state does not endow anyone with special obligations, the main obligation for everyone is to strictly follow the requirements of the adopted fair laws. We also consider it necessary to mention that the legal state is necessary not only for ensuring order and order in the country, but also for the development and modernization of the state. It is the

obligation of every country that declares itself to be a legal state to provide minimum conditions for a dignified life and free activity of every person. We believe that the absence of such conditions will endanger not only the guarantee of human rights and freedom, but will also seriously undermine a person's trust in the state, the foundations of the legal state.

In a general approach, we can say that when the co-evolution of the human-society-state connection turns into a truly functioning mechanism, then we will be able to talk about securing the goals and interests of a certain individual, stabilizing society and forming a democratic legal state. "The individual for the state, and the state for the individual". this is the main slogan and the necessary basis for the establishment of the Republic of Armenia as a legal state.

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