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Modern Russian Constitutionalism: Philosophical Conceptualisation in Light of Constitutional Justice

In accordance with the methodology of worldview legal pluralism, which derives from the combination of positivism and natural law, this article considers constitutionalism as a legal and philosophical category. One of the fundamental features of modern constitutionalism is constitutional justice. In this capacity, the Constitutional Court of Russia is not only the custodian, but also the reformer, of the Constitution, serving as a key factor in the development of the Russian constitutionalism. Building on this assumption, the article analyses the main developmental directions of judicial ("live") constitutionalism as a qualitatively new political and legal regime of judicial protection of the Russian Constitution and the provision of the rule of law. Furthermore, it explores the normative-doctrinal meaning of decisions of the Constitutional Court.

Key words: the Constitutional Court of the Russian Federation, constitutional justice, constitutionalism, positivism, natural law, judicial constitutionalism

The current epoch is characterised by a systemic crisis of constitutionalism, which has encompassed not only structural and functional features, but also the axiological foundations of classical institutions of constitutional democracy. This is accompanied by deepening contradictions and increased competition between fundamental principles and constitutional values of democracy, such as human rights and state sovereignty, and the need for personal, public and state safety, which face humanity in the 21st century in light of emerging global threats.

Undoubtedly, contemporary geopolitical changes have constitutional significance, albeit not always positive. As a result, these changes objectively predetermine the need to develop a new philosophy of constitutionalism, which includes the development of new approaches to form the basis of certain integral, synthetic, worldly, moral-ethical, socio-economic, and political foundations of contemporary constitutionalism. Simultaneously, this predetermines new claims to the gnosiology of modern constitutionalism, specifically to the process of understanding it by means of elucidating general patterns, as well as through the national-historical specificities of constitutional development of contemporary states, which becomes apparent — particularly within the political and legal spheres — in constitutional justice.

1. Methodological pluralism — "the salutary foundation" of the philosophical conceptualisation of modern constitutionalism.

A dynamism — hitherto unknown to any other historical epoch — which is characterised by the swiftness of regenerating not only political, socio-economic, moral-ethical, clerical-confessional, but also the constitutional foundations of state and public life — a phenomenon facing post-Soviet states, including Russia — objectively sets out the need for active supplementation of dogmatic methods for examining the regulatory, official component of constitutionalism with sociological, historical, moral-ethnical, and philosophical methods of conceptualisation in order to grasp the complex phenomena of constitutional and regulatory reality. Only through the application of such wide and general approaches is it possible to detect and evaluate the internal connections, general patterns, and socio-cultural specificities of modern globalised constitutionalism. And this is not coincidental: the constitution itself represents the outcome of public and state social conflicts, serving as the regulatory instrument and legal basis for their resolution. As such, the principal methodological question, which arises from the analysis of any constitutional system within the context of contemporary global issues, deals with the cultural-historical aspect of the universal juridical mechanism of implementing universally recognised constitutional values.

The culturological approach, which facilitates not only the understanding of essential foundations of regulatory phenomena, but also the generation of new knowledge of social reality, must become one of the primary pillars of the modern conception of constitutional philosophy. No rational formal-legal reasoning can be free of national culture and morality.

In this regard, the current state of constitutional philosophy can be characterised, in the words of I.A. Ilyin, as the loss of faith in the salutary methodological monism and the transition to the fundamental acknowledgement of methodological pluralism[1]. It is assumed that various conceptualisations — legal approaches during transition to real constitutionalism — acquire the significance of effective doctrinal features to the extent that they can be authentically integrated into the constitutional space of regulation, which requires the "communicative-integrative" or — the significant feature for studying legal systems — constitutional legal understanding[2]. This presupposes the acceptance and affirmation of philosophical pluralism not only as a doctrinal research method, but also as the most important (from a constitutional perspective) principle of the normative-legal system of organisation and functioning of the entire system of democratic governance.

This fully captures the universal nature of the concept of "constitutionalism": this category has the capacity to encompass not only legal, as well as non-juridical (pre-juridical or post-juridical), phenomena, but also "metajuridical" phenomena of social, economic, political or cultural nature. And this inclusion does not imply the *socio-cultural premise underlying the basis* of constitutionalism, but rather the *inherent characteristics* (social, culturological, moral-ethical, etc.) of the institutional *legal subsystem* of constitutionalism and simultaneously *the context for its existence and development*, which influence the basic historical nature of the given phenomena.

[1] See: *Ilyin I.A.* Ideas of Law and Power (A methodological analysis). *Ilyin I.A.* Collected Works in 10 volumes. Volume 4. Moscow. 1994. P. 9–10.

[2] Russian legal science offers a number of different approaches, for instance: *Kruss V.I.* The Theory of Applying Constitutional Law. Moscow: Norma. 2007; *Polyakov A.V.* The General Theory of Law. Problems of Interpretation Within the Context of the Communicative Approach. St. Petersburg. 2004; *Maltsev G.V.* Understanding Law. Approaches and Problems. Moscow, 1999.

In this sense, the philosophical conceptualisation of modern Russian constitutionalism has not only the fundamental methodological, but also applied, significance. This incorporates the understanding of corresponding social practices as both a sphere for implementing the philosophy of modern constitutionalism and an institutional instrument for its development, whereby — as a consequence of decisions taken by the Constitutional Court of the Russian Federation (hereinafter CC RF) — they acquire the significance of concrete (normative-doctrinal) manifestations of the philosophy of modern constitutionalism.

When it comes to the actual definition of "constitutionalism", much can be said about its semantic and structural characteristics, its principles, and qualities when trying to establish a universal and acceptable definition. However, irrespective of this, we all know the significance of lacking constitutionalism in state and society. This is not accidental. In understanding this phenomenon, much weight is given to non-juridical knowledge, based on faith, personal views, customs and traditions, and moral and ethical requirements of Justice and Truth. Saint Paul's words are illustrative in this case in that no one can use the excuse of not knowing how to behave, for the moral code is inscribed into the heart of each individual: individuals "without law, act lawfully according to nature" as "the rule of law is inscribed in their hearts".[3]

Ultimately, this understanding is present in addressing ontological, axiological, gnosiological and other problems of constitutional philosophy, as well as in *"doctrinally objectifying"* the category of "constitutionalism" in the theory and practice of constitutional justice.

2. Constitutionalism as a philosophical-legal category: the unity of public-authoritative, socio-cultural, and moral-ethical foundations.

With the existence of a multiplicity of approaches to defining the concept of constitutionalism[4], it is clear that the traditional approach to constitutionalism as a juridical, political-legal problem, prevalent in research literature, is not sufficient. This concept is too complicated to award complete control over to the jurists. As one of the universal philosophical-legal categories, constitutionalism is called upon to reflect the most important (universal) values of modern civilisation. These values are apparent in concentrated form in the patterns of democratic organisation of society and the state on the basis of *the triune balance of authority-property-freedom* within the context of the supremacy of the law, adherence to and protection of rights and freedoms of the individual and the citizen, and compliance with moral-ethical imperatives that had formed within state and society. The specific, structured plan of constitutionalism as a philosophical-legal, socio-cultural and moral-ethical category is described below.

Firstly, *doctrinal constitutionalism* as a special *philosophical-legal theory* includes systems of political-legal ideas and conceptualisations, which simultaneously represent the study of the constitution — the constitutional foundations of organisation of power — and a defined system of moral-ethical conceptions of justice and equality, freedom and accountability,

[3] Quoted from: *Sorokin V.V.* Conscience as an Element of the Russian Orthodox Sense of Justice. State and Law. N 6. P. 23. See also: *Papayan R.A.* Christian Roots of Modern Law. Moscow, Norma. 2002.

[4] See, for instance: *Berman G.D.* The Western Tradition of Law: the Epoch of Formation. Moscow. 1998; *Shaio A.* Self-restraint of Power (a Short Course on Constitutionalism). Moscow. 1999; *Kravets I.A.* Russian Constitutionalism: Problems of Formation, Development and Implementation. St. Petersburg. 2004; *Kutafin O.E.* Russian Constitutionalism. Moscow, 2008; *Russell G.* Constitutionalism: America and Beyond. http://www.infousa.ru/government/dmpaper2.htm (09.03.2009).

good and evil, and, of course, the nature of the relationships between society, the state and the individual within the context of accepting (or rejecting) these values. In a sense, this comprises the gnosiological component of constitutionalism. Despite the presence of multiple research studies linking law to morality[5], the question of specific mechanisms and actual inclusion of spiritual-moral values into the system of existing legislation remains pressing. For now, it must be acknowledged, that only isolated and fairly timid attempts have been made at establishing moral values, and their legal provision as necessary regulators of actual life, through juridical practice.[6]

Secondly, the given *philosophical-legal* category embodies *normative-legal constitutionalism* as a system of *constitutional positivism*, which, by means of state hierarchy, constitutes a normative-legal constitutional space that is based on moral-ethical, socio-cultural values of society and is subject to the Constitution — the supreme formal juridical imperative of state and society. The Constitution itself serves as the normative-legal centre of constitutionalism.

Thirdly, it is *ontological constitutionalism* that constitutes *constitutional-legal practice* in the most expansive sense of societal and governmental development, including, of course, constitutional — legislative, administrative, judicial — practice. Evidently, it is at this level of implementing the Constitution and legislation that the moral crisis of modern constitutionalism becomes most apparent. Specifically, juridical positivism completely dominates the legal professional understanding of legal decision-makers, serving as one of the factors fueling the moral crisis of constitutionalism. The constitutional plan contains foundations for raising issues beyond professional juridical ethics (of investigators, judges, state or local officials) to implement constitutional maxims in the professional and public legal conceptualisation: *an unjust decision cannot be constitutional.* Decision-makers in the legislative, executive and judicial branches are the intended recipients of these essentially moral-ethical, though constitutionally significant, maxims.

Fourthly, and finally, as a moral-ethical and philosophical-legal category, constitutionalism embodies the characteristics of one of the forms of *public conscience*, which reflects the universality of constitutional psychology and constitutional ideology and, in turn, comprises the decisive prerequisite for the formation of a new type of juridical vision of reality — *the constitutional world-view*. In a certain way, constitutionalism incorporates the spontaneous legal experience into a normatively conceptualised model, based on the values of the supremacy of the law, human rights, social justice, and equality before the law, rule of law, division of powers, and political, ideological and economic pluralism, etc. Within the scope of this model, constitutionalism facilitates the implementation of various world-view, value-oriented, normative-regulatory, and educational functions. Specifically, it organises and structures public and individual conceptualisation of the law and of legal philosophy. In this regard, constitutionalism — as a complex axiological, teleological and praxeological system — is one of the universal, non-material values of civilisation and comprises humanity's cultural legacy, on the one hand, and is a national and cultural

[5] See, for instance: *Maltsev G.V.* The Moral Foundations of Law. Moscow. SGU. 2008; *Lukasheva E.A.* Law, Morality, and the Individual. Moscow. 1986.

[6] These attempts include the ratification of special laws concerning the protection of individual and public morality, with a focus on national and historical specificities, across different jurisdictions of the Russian Federation (for example, the Republic of Dagestan, the Republic of Sakha (Yakutia), the Altai Region, the Krasnoyarsk Region).

property of each people, nation, and government, on the other. However, it is necessary to acknowledge that this is one of the spheres of constitutionalism (especially if we take into account corresponding constitutional legal policies) that is least and, at times, not at all likely to "account for" moral reference points, as well as constitutional-legal controls and limits.

The fact that constitutionalism cannot be considered as a product of the state or as a state-controlled phenomenon can ostensibly "justify" this state of affairs, as the state is incapable of "instituting", "decreeing", or "establishing" legislation to formulate a desired variation of constitutionalism, despite the fact that the state is, undoubtedly, obliged to make the necessary efforts to affirm and develop constitutionalism in a manner that is most appropriate to the state. *Constitutionalism is the objectively emerging pattern of real public relationships*, which is based on the publicly accepted moral-legal requirements of justice and degree of achieved freedom, as well as the inadmissibility of lawlessness and violence. This order is formulated on the basis of maintaining these internal relationships, transforming them into mediums of justice and criteria of freedom. As a result, relationships, which comprise constitutionalism, acquire the capacity to embody certain requirements and normative models, which guide the behaviour of citizens, officials, organs of power and the state as a whole to comply with the ideals of justice and freedom.

Without the intent to diminish the significance of other branches of power, it is essential to note the important role played by the judicial branch as a body of authority that shapes constitutional normative control, as well as the development, in particular, of the axiological foundations of modern constitutionalism and the linkage of formal juridical elements with moral-ethical and culturological elements of constitutionalism.

3. Constitutional justice — the generator of judicial ("live") constitutionalism.

Russia's federally implemented model of strong constitutional justice is guaranteed by the active role taken on by the CC RF not only as a judicial and legislative, but also as a quasi-lawmaking, body that develops and implements the system of real Russian constitutionalism. In this sense, CC RF is not only the guardian, but also the interpreter, of the existing constitutional system. The governmental power system of constitutional justice, the material manifestations and normative equivalents of which are the *legal positions of CC RF* that are formulated as normative-doctrinal conclusions on the basis of final conclusions regarding specific cases, penetrates all components of constitutionalism and has an active effect on them.

Through the application of constitutional justice, constitutionalism is brought up to date, taking into account the changing historical conditions of its development. Consequently, reality (the system of real relationships) and legal ideals (juridical constitution) are brought together, transforming into "live" constitutionalism. On this basis, it is possible to formulate a new — in many ways, unique — political-legal formulation of constitutional governance — *judicial constitutionalism*.

The initial authorial conceptions of judicial constitutionalism originate from the essential characteristics of the Constitution, on the one hand, and constitutional prescriptions deriving from the judicial branch, particularly concerning constitutional justice, on the other.[7] The necessity of having the judicial branch take part in solving constitutionally important issues has an objective purpose. It is conditioned by the acceptance of judicial power as one of the pillars of the constitutional system, which is tasked with ensuring the

[7] See: *Bondar N.S.* Judicial Constitutionalism in Russia in Light of Constitutional Justice. Moscow. Norma. 2011.

supremacy and the direct implementation of the Russian Constitution, as corroborated by national and foreign practices.

With regard to Russia, we account for the entirety of the judicial system, including constitutional, juridical, and arbitrational components. As part of the law-enforcing component of constitutionalism, judicial practice has a significant effect on its normative components and, ultimately, on the socio-philosophical foundations of the system of real constitutionalism. It is not only in the common law countries, but also in the Romano-Germanic (continental) legal systems that the judicial branch specifically formulates the precedent-related conceptualisation of constitutional-legal regulation of public relations within the scope of judicial cases and, as such, formulates the system's specificities and development. The judicial branch identifies, establishes, defines, and specifies relevant constitutional pillars (principles) of sectoral legislation. It eliminates normative acts that do not correspond with the law and are ultimately deemed unconstitutional from the legal system through the use of courts of all jurisdictions. The interpretations of the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation (articles 126 and 127 of the RF Constitution) play a significant role because these courts were designed to provide a universal judicial interpretation and application of legislative norms and, by implementing this task, they frequently affect law-making. Nonetheless, in the instance that, in the course of the judicial process, a general jurisdiction court or an arbitration court establishes the presence of ambiguity in relation to adhering to the RF Constitution, the courts are obliged to direct the case to the Constitutional Court of the Russian Federation.[8]

The need to involve courts from various jurisdictions in solving constitutionally important issues has an objective purpose. In the most general view, this need is conditioned by the acceptance of judicial power as one of the pillars of the constitutional system (statue 10 of the RF Constitution), which was designed to ensure the supremacy and direct implementation of the Constitution (articles 15). At the same time, it is clear that constitutional justice, as a specialised instrument of legal protection of the Russian Constitution, plays a key role in this process.

This conceptualisation of constitutional justice is universally accepted in countries applying the Kelsen (continental) constitutional normative model. This makes sense: "a constitution — as described in the general report of the XIV Congress of the European Constitutional Courts' Conference (Vilnius, 3–6 June, 2008) — without a constitutional control body, which possesses the authority to certify contradictions of regular normative acts with the constitution, is *lex imperfecta*. A constitution becomes *lex perfecta* only when the constitutional court can recognise regular laws that violate the constitution... Only the active position of the constitutional court can provide a real, rather than an assumed, implementation of the principle of constitutional supremacy... The role of the constitutional court to ensure the application of constitutional supremacy is fundamental. Through constitutional control, the constitution, as a legal act, transforms into "live" law"[9] and — let's add — constitutionalism transforms into "live" Constitutionalism.

[8] See: Constitutional Court of the Russian Federation resolution, dated 16 June 1998, N 19-P, in the case of interpreting separate provisions of articles 125, 126 and 127 of the Constitution of the Russian Federation. SZ RF. 1998. N 25. St. 3004.

[9] See: General report of the XIV Congress of the European Constitutional Courts' Conference (Vilnius, 3–6 June, 2008). Constitutional Justice. Bulletin from the Conference of Bodies of Constitutional Control of Young Democratic Countries. Yerevan. 2008. Edition: 2–3. P. 110–111.

The practice of constitutional justice objectifies both the formal-juridical and the social nature of the Constitution as a legal act of supreme juridical authority and direct influence, which serves as the product, reflection and universal resolution instrument of social conflicts. It is from this perspective that it becomes possible to consider the formulation of the RF Constitutional Court as one of the most important prerequisites for ensuring that Russia practices real, "live" constitutionalism, rather than declarative constitutionalism. *The CC RF serves as the guarantor of the indissolubility of the factual and juridical constitution*, which also secures the unity of the real and the ideal constitutional space.

Taking into account the nature of constitutional justice, which simultaneously embodies a specialised constitutional-authoritative institution and an institution of judicial power, it can be argued that the formulation of the CC RF as a sort of material-organisational, purpose-designed manifestation of constitutionalism is the key step to the formation of a new type of constitutionalism — judicial constitutionalism. Using this understanding of judicial constitutionalism, combined with the role played by constitutional justice in its formation and development, we must consider several key moments.

Firstly, CC RF's decisions, in their capacity to represent specialised normative legal acts, are the normative legal foundation underlying the formation of judicial constitutionalism and, as such, the formulation of the entire Russian system of constitutionalism. The court's decisions are the manifestations of its nature and purpose as a normative legal component of judicial constitutionalism.

Secondly, constitutional justice and corresponding resolutions comprise one of the most important sources underlying the development of the modern constitutional doctrine — the modernisation of Russian governance (the doctrinal component of judicial constitutionalism) — which is sourced from the normative-declarative components of CC RF's decisions.

Thirdly, CC RF is the generator of constitutional ideology, as well as the creator of new constitutional culture, which shapes the public's and the individual's constitutional worldview (the ideological component of judicial constitutionalism).

Fourthly, judicial constitutionalism is the manifestation of the constitutional-judicial practice, whereby constitutional supremacy is applied to real life, having a direct effect on constitutional values in society and state (the material component of judicial constitutionalism).

Judicial constitutionalism facilitates the consolidation and maintenance of the constitutional order as the supreme juridical expression of legal democratic governance. This is ensured by conferring factual (practical and applied) values to the constitution, which penetrate both the public-authoritative life and the processes of consolidating the rights and freedoms of the individual and the citizen.

Accordingly, constitutional justice, as the embodiment of a specialised constitutional-authoritative institution and an institution of judicial power, as well as the cumulative manifestation of state-legal control, serves as one of the primary channels and, simultaneously, as an attributed indicator of constitutionalism. Judicial constitutionalism defines the structure of constitutionalism and supplies it with the necessary degree of stability and dynamism. From this perspective, *judicial constitutionalism can be perceived as a political-legal regime of judicial provision of the supremacy of the law and the direct influence of the Constitution*. It can be said to provide absolute judicial-legal guarantees of constitutional values, on the basis of the balance between power and freedom, public and private interests,

unity of socio-cultural and normative legal factors, which help to constitutionally develop Russia into a democratic government by economic, social and political means.

Constitutional control, principally reflected through constitutional justice, functions as a fundamental characteristic of judicial constitutionalism, penetrating all of its comprising parts. The establishment and the functioning of the institution of constitutional-judicial control transforms constitutionalism and takes it to a new level of practical reality.

The creative-transformational function of constitutional justice comes about with the assistance of various methods of judicial normative control within the scope of constitutionally set authorities granted to CC RF. Foremost, this includes the *interpretation of the norms set out in the RF Constitution,* which allows for a transformation of the Constitution without the need for its alteration. The official interpretation of the Constitution allows for a governmental-legal (constitutional) evaluation of corresponding social spheres, as well as for a defined development of the content of constitutional norms. This facilitates the timely amendment of the constitutional basis for sectoral legislation, which specifies given constitutional norms and institutions. Clearly, CC RF's decisions must originate not from the current state of political affairs, but rather from the requirements of the Constitution itself, perceived as a "meta-legal" document. In interpreting the Constitution, the Court takes on a normative-doctrinal, quasi-lawmaking function when it formulate its decisions, as they become part of the Constitution and are comparable with it in terms of juridical power.

The transformation of constitutional relationships also occurs as a result of *resolving constitutional-legal conflicts*. Their resolution — the formulation of a conclusive decision on the constitutionality or the non-constitutionality of a given law — requires the identification of the meaning and essence of the constitutional-legal approach to a given question, including the existing system of legal regulation. An appropriate outcome to this particular type of constitutional-legal activity is the elucidation and interpretation of direct and reverse links between the provisions of the Constitution and current legislation — their synchronisation within the scope of the hierarchical legal system, on the one hand, and the enrichment and development of the normative potential of constitutional principles and norms, on the other.

Constitutional interpretation of legal norms of sectoral legislation comprises an important mechanism of constitutional transformation by means of constitutional regulation and delineation of constitutional relationships. The work of CC RF, linked to the implementation of constitutional interpretation of legislative provisions, is also a form of quasi-lawmaking activity, which implies the building up of normative energy of sectoral legislation through constitutional principles and values that facilitate the evaluation of norms within existing legislation.

The CC RF's recommendations, outlining the improvement of legal regulations, to the legislator, deriving from the Court's resolutions on specific cases, serve as the next step to developing constitutional institutions of Russian governance through constitutional justice. This emerges from the very nature and specificities of the juridical authority of these recommendations. The recommendations to the legislator, as developed by the CC RF on the basis of specific cases, do not directly oblige lawmaking institutions, but rather orient them for future systematic implementation of constitutional principles within legislative projects. Consequently, the legislator's failure to acknowledge or, worse, actively disregard, the recommendations can lead to contradictions and disagreements in legislation vis-a-vis the RF Constitution. This can increase the threat of violating the constitutional rights and freedoms of the individual and citizen, as well as public interests and values.

As such, judicial constitutionalism provides a consistent harmonisation of the letter and the spirit of the Constitution. It links the Constitution's formal-juridical content with "social norms", which embody the real relationships between political powers and economic and social organisation of state and society.

4. Philosophical-worldview pluralism in constitutional justice: concord of positivism and natural justice.

Among the various conceptual approaches, the quintessence of the philosophical-worldview approach to modern constitutionalism rests in the realisation of two modern state-legal systems of legal interpretation — positivism and natural justice. The external — formal-juridical — expression of these philosophical-worldview concepts of modern constitutionalism is found in the relationship of the Constitution with the law, on the one hand, and legislation, on the other.

These two legal directions — positivism and natural justice — are important within the scope of the philosophical-worldview system of interpreting legal activity. For the constitutional-legal science, these two categories have a similar influence to Plato's and Aristotle's teachings for philosophers.[10] Here, we are talking about the use of these two philosophical-legal directions to implement various gnosiological guidelines, which carry an important methodological sense, embodying the entire system of modern constitutionalism.

It can be posited that the 1993 RF Constitution is characterised by philosophical-worldview pluralism. This pluralism is based on the combination of natural justice and positivist approaches. At the same time, when considering the formal philosophical dogma, it can be posited that the Russian constitutional space lacks philosophical-worldview monism and instead pioneers a certain worldview eclecticism, which suggests that the natural justice approach competes with the positivist approach. Such evaluations have a place in research literature, like the assertions that in the Russian Federation "the constitutional conceptualisation of human rights (and the conceptualisation of corresponding legislation) *eclectically* (author's emphasis — N.B.) links non-positivist views regarding legal freedoms with positivist views on legally sanctioned rights".[11]

This approach clearly juxtaposes natural justice and positivism and eliminates the possibility of their co-existence. It acknowledges their independence of each other and their comparable juridical value without damaging the essence of the law as a manifestation of freedom, equality and justice. At the same time, ancient philosophical teachings open the possibility of bringing together opposing philosophical theories, when the tensions between the two approaches beget the creation of a new positive quality that can lead to a positive outcome. From this perspective, the attentive and unprejudiced analysis of the RF Constitution provides evidence that the Constitution, though it identifies the independence of the natural justice and positivist doctrines, does not contrapose them and does not suggest an antagonistic relationship between the two. On the contrary, the Constitution strives to develop a synthesised, coordinated understanding with the purpose of developing effective legal interpretation.

[10] See: *Vorotilin E.A.* Natural Justice and the Formation of Juridical Positivism. State and Law. N 9; *Rudovskii V.A.* Positivism and Natural Justice (Legal Philosophy) in the Context of Modern Legal Interpretation. Philosophy of Law. 2008. N 5.

[11] See: *Chetvernin V.A.* Russian Constitutional Conceptualisation of Legal Interpretation. Constitutional Law: Eastern European Review. 2003. N 4. P. 32.

Indeed, to a large degree, the RF Constitution realises the concepts of the natural justice approach. As such, according to the Constitution, the individual, and his rights and freedoms, comprises the supreme value (article 2). This value, acknowledged and guaranteed in the Russian Federation in accordance with universally recognised principles of international law, is inalienable and is granted to everyone from birth (article 17). At the same time, the RF Constitution sets out the inadmissibility of opposing natural justice guidelines (set out directly in the Constitution) in consequent legislative regulation of individual rights and freedoms. On the contrary, the authority of state-legal regulation regarding individual rights lies with the federal legislator (article 71). Article 18 of the RF Constitution sets out that *rights and freedoms determine the essence, content and application of legislation*; in other words, the natural justice components of rights and freedoms must be objectified in positivist (passed by the government) legislation in order to be implemented in lawmaking activities.

Within the philosophical-worldview foundation of modern Russian constitutionalism, natural justice and positivist approaches are integrated within the concept of *legal legislation*. The CC RF serves as the main organisational-legal mechanism for coordinating the two philosophical-worldview approaches, ensuring their harmonisation within the scope of Russian constitutionalism.

From the perspective of constitutional justice, this issue goes beyond the practical, utilitarian sense, if we take into account the possibilities and the objective necessity of utilising corresponding philosophical doctrines in order to formulate the juridical logic of constitutional-judicial normative control and the development of necessary constitutional-legal approaches (motivational and foundational) in solving specific cases. The philosophy of constitutionalism — when considered within the sphere of constitutional control — has a wider application. It serves as a sort of foundational system, which determines the essence of the institution of constitutional control. It influences its functional characteristics and, in many ways, sets the guidelines for the practical work of the institution charged with constitutional control. It is the conceptual differentiation between law and legislation, including their relationship with the Constitution, and the desire to formulate legal legislation on this basis, that serves as the decisive prerequisite for formulating the legal content of legislative acts, and their link to the Constitution, and, in a sense, institutionalises the given control-judicial function.

The conceptual delineation of law from legislation — the conferring of an inherent legal foundation to legislation tied exclusively to the will of the legislator (which is characteristic of juridical positivism) — in principle, excludes the possibility of constitutional control, as the key maxim of this doctrine is "the legislator is always right" and, as a consequence, the evaluation of the legitimacy of the legislator's actions is pointless.

In utilising the constitutional-legal doctrine of legal legislation, the CC RF strives to bring a balanced combination of positivist and natural justice principles into the national constitutional-legal system. Considering that the law, in its content and origin, has an "external lawmaking" and "pre-lawmaking" nature, the CC RF strives to express as fully as possible the law in legislation (in the widest sense of this word). In other words, legislation is designed to provide a formal form for the law, representing the universal understanding and application of equality of rights among citizens.

Accordingly, the CC RF acknowledges the existence of the so-called *informal sources of the law* and, specifically, actively participates in implementing institutional control us-

ing *general principles of the law and legal principles*, using them as evaluation criteria for determining the constitutionality of legislative norms. According to the CC RF, these principles contain the greatest degree of normative generalisability and determine the content of constitutional individual rights — and other corresponding citizen rights. They also have a universal nature and, as a result, have regulatory influence on all spheres of public relationships. The authority of these principles is constituted in their supremacy vis-a-vis other legal provisions, as well as their influence over all legal subjects. As such, the actions of the legislator, the lawmaker or other legal subject must not contradict not only *the letter*, but also the *spirit* of the RF Constitution and its principles, including the principles of the rule of law, justice, balance between public and private interests, etc.[12]

At the same time, the CC RF does not set the law and legislation against each other and utilises all possible constitutional-legal means to ensure the constitutionality of the content of existing legislation. This emphasises the CC RF's sensitive approach to legislation. This is linked to the *presumption of legislative constitutionality* and the method of constitutional-judicial control, which employs a constitutional-legal interpretation and allows the identification of the legal (constitutional) meaning of the legislation and the elimination of all other — unlawful — interpretations from existing practice. If the CC RF establishes that, as a result of an inadequate interpretation of the RF Constitution by a legislator, a norm is interpreted unconstitutionally, the court, without having to eliminate the norm from the legal system — as that can have a significant impact on the functioning of the legal system as a whole and create difficulties for lawmaking, specifically, as a result of the emerging gap in the regulatory legislation — has the right to restore its constitutional-legal interpretation by acknowledging that the norm does not contradict the RF Constitution in a constitutional-legal sense. The CC RF"s decision — which confirms the constitutionality of the norm within a narrow interpretation and thus, excludes any other interpretation (in other words, an unconstitutional interpretation or the application of an unconstitutional interpretation) — has the same effect as if the norm was considered unconstitutional vis-a-vis the RF Constitution.[13]

The main instruments for harmonising natural justice with positivism within the scope of constitutional control are constitutional values and, consequently, the search for balance between authority and freedom, between the rights of the individual and public safety, between democracy and centralism, between freedom of enterprise and social security, as well as other rival values inherent in the normative make-up of existing legislation and in lawmaking practice.

5. Universal constitutional values — the objective-gnosiological mechanism of constitutional justice.

The question of constitutional values can be considered from various aspects: from a general theoretical perspective of constitutional philosophy, which is related to the identification of the meaning, content and system of constitutional values and the nature of their influence on the constitutional world view; or from a pragmatic applied perspective, as not only an element of axiology, but also as a component of constitutional praxeology, which implies the need to develop a mechanism for applying constitutional values to lawmak-

[12] See: CC RF Resolution, dated 27 January 1993, N 1-P, SZ RF. 1993. N 14. Statute 508; CC RF Resolution, dated 21 December, 2005, N 13-P. SZ RF. 2006. N 8. Statute 945.

[13] See: CC RF Resolution, dated 21 December 2011. N 30-P. Rossiisskaiia Gazeta. 2012. 11 January; Ruling of the CC RF, dated 11 November 2008. N 556 O-P. SZ RF. 2008. N 48. Statute 5722.

ing, law-creating forms of practical activity in fulfilling specific goals of state and public development.

As such, constitutional values serve as the gnosiological, and axiological, as well as the objective-ontological equivalent of the philosophy of modern constitutionalism. This is reflected in the fact that axiology is the sphere of values and is "the foundational attribute and responsibility of philosophy".[14] In other words, the philosophy of constitutionalism acquires a practical significance — partly as a result of constitutional justice — as a study of constitutional values. It becomes the study of values.

By this, we assume that a "value" is a universal and multifaceted concept, which encompasses all spheres and levels of social life, including those that are influenced by constitutional-legal and, especially, constitutional justice. At the same time, *constitutional values* comprise not only the general, doctrinal-gnosiological category of the philosophy of constitutionalism, but also a *category of existing law.* The specificities of its normative-legal nature are determined by its own (constitutional-legal) features, which are ultimately derived from the Constitution, a document that represents direct action, as well as the specificities derived from the normative-legal nature of its decisions.

The specific character of the normative energy of constitutional values is such that it both affects and assumes the political-legal shape of normative dimensions at the highest level of abstraction — general legal principles, constitutional principles, declarations, constitutional presumptions, categorical features of subjects of constitutional rule and constitutional phenomena, etc. Constitutional values help increase and actualise the normative content of corresponding norms, institutions, principles, as well as underpin their balanced interaction. From this perspective, constitutional values are not only instrumental means of normative control of constitutional institutions, but also, to some extent, the outcome of their work.

The normative-lawmaking value of constitutional values manifests itself when the CC RF employs them to identify and evaluate legal models of organisation of various spheres of social life, to overcome gaps and defects in legislative regulation, to identify the patterns of development of constitutional relationships, and to establish a constitutional strategy for improving legislation within the sphere of influence of constitutional normative control.

Social values, which are reflected in the Constitution, constitute the qualitative nature of state-legal phenomena of the highest order, associated with society's acknowledgement — through the prism of democratic experience and national-historical practice — of the concepts of human virtues, good and justice, the fundamental goals and norms of development, which represent the most reasonable forms of public and state organisation. During the process of constitutionalisation, corresponding social values become streamlined, assuming a particular hierarchical system of multi-level links and correlations, based on the existing state-organisational societal context. In representing a system of linkages between rights and obligations (freedom and accountability), the legal-social order serves as an actual measure of social values.

Therefore, constitutional values are closely linked — both explicitly and implicitly — with the normative energy of the Constitution. On the one hand, they serve as the social-legal generator of this energy, providing the bridge between generally accepted, universal and beneficial rules of everyday life and the normative content of compulsory constitutional

[14] See: *Guseinov A.A.* Philosophy: Between Knowledge and Values. Philosophical Sciences. 2001. N 2. P. 19–20.

resolutions. As such, publicly employed constitutional values that have come about as a result of adequate constitutional entrenchment (introduction into Constitutional norms) do not only legitimise the Constitution, but also obtain a formal-juridical normative nature and bind all legal subjects, including the state as a whole.

On the other hand, as a system of social-legal values becomes constitutionally formalised, actual axiological constitutional relationships become subject to compulsory norms of fundamental law and, therefore, can no longer develop by any other means than the correlated influence with formally established rules and norms. As such, the correspondence of actual social-legal values with formal ones doubles their normative potential; while their contradiction not only decreases trust towards the Constitution, but also complicates the implementation of its provisions, as it derives its roots from fundamental law. The harmonisation of real and formal social-legal values within the normative scope of existing Constitutional provisions is the strategic task of the RF Constitutional Court, as set out in its functions and powers.

One of the fundamental processes underlying the current epoch of human development is globalisation, whose processes directly affect constitutional values and their hierarchical nature.

Democratic constitutional values are the foundation of the processes underlying juridical globalisation. Juridical globalisation does not only reflect the spatial (quantitative), but also the qualitative, nature of the internationalisation of juridical life. At its centre is the accumulation of general, universal in terms of normative-legal standards, objective reality of modern civilisation. The most important thing, however, is that juridical globalisation reflects juridical patterns — the increase in the legal normalisation of the main spheres of social life. However, this only reflects one aspect of it. The other feature of juridical globalisation represents the reaction to the new global threats to humanity that have emerged in the 21st century. These include international terrorism, natural and anthropogenic catastrophes, ecological and energy crises, etc.

As such, the processes of juridical globalisation require constitutional evaluation at the level of national state-legal systems, although we must account for the fact that, as a result of global events as well as their own nature, these processes far exceed the boundaries of their own constitutional-legal systems. At the same time, the process of universalising constitutional values is accompanied by their transformation from mythologised political-ideological features into functioning normative-legal imperatives.

Within the scope of juridical globalisation, theses processes can manifest in various aspects: a) the institutional, lawmaking aspect, which links modern legal systems on the basis of the unity of their constitutional values; b) the legal implementation aspect, whereby supranational juridical authorities are formed to protect generally accepted values (foremost, individual rights and freedoms); c) the establishment of new legal ideology, whereby new types of legal conceptualisation and legal culture are established and result in the unification of legal values and the linking of fundamental features of national legal cultures; d) the constitutionalisation of universally accepted principles and norms of international law and the subsequent linking of internal state juridical-legal foundations with international relations, etc.

The elucidation of value criteria and reference points, embedded in legal globalisation and, thus in the juridical progress of democratic governments, plays a significant role. In a sense, it is the acknowledgement of the modern juridical globalisation axiom that these

processes must develop in the direction of *juridical freedom, authority and property*, as fundamental components of modern socio-political and economic systems. From this perspective, the "property-authority-freedom" axiom serves as the philosophical-existential trinity of modern constitutionalism's foundations.

In the modern world, the search for balance between values of this constitutional trinity and, ultimately, public values and private values is incredibly important. In the formal, normative-legal sense, this is an issue of reconciling the sovereignty of state power (emphasising the sovereignty aspect of power) and freedom, which directly or indirectly underpins the entire system of constitutional regulation and is present in every constitutional institution, as well as each norm and statute of the Constitution. In this sense, the search for balance between power and freedom comprises the most important element within the theory and practice of modern constitutionalism.

As such, globalisation directly affects the constitutional systems of modern states by setting out new criteria for developing their values, modernising and protecting various institutions and mechanisms of their implementation, including the system of "live" (judicial) constitutionalism.