

## CONSTITUTIONAL PROLOGUE: VERSIONS OF EASTERN EUROPEAN STATES

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### ABSTRACT

In this article they identified common and special features and the guidelines for the constitutional development according to the analysis of the constitutional preamble texts and the nameless analogues of Eastern European countries. The use of a number of universal criteria - sovereignty, territorial integrity, democracy, human rights and freedoms, etc. - made it possible to characterize the content of these composite parts. It was concluded that "constitutional prologues" make it possible to understand the approaches, values, pillars, priorities and guidelines of the constitutional construction of Eastern European countries, that they act as capacious messages to the internal and external environment and can ideally promote the development of a "value ground" both for civil peace and consent provision, and for the cooperation of states on the basis of their agreed goodwill.

**Keywords:** constitution, preamble, constitutional prologue, state, people, nation, sovereignty, democracy, territorial integrity.

### INTRODUCTION

Constitution is the common denominator for the overwhelming majority of countries, formally or doctrinally recognized as the main or the basic law with the highest legal force in the whole territory of a state. At that, each state decides independently about the form and the content of its constitution, in fact, offering a broad field for analysis to researchers.

One of the typical and starting constitution characteristics is its structure, the variable compositional part of which is the "introductory fragment", called, as a rule, a preamble in legal literature [1, 2, 3]. However, quite often its given composition part may not be named in the text of a constitution, which actualizes the issue about the selection of its universal name. Located at the very beginning of a constitutional text, it can be called an introduction or a preamble. The version of a "constitutional overture" was also proposed [4]. Without the objection in principle, we consider it is more appropriate to call this compositional part of a constitution as "a constitutional prologue".

The constitutional preambles and their unnamed analogues are of scientific interest as independent, genre-separated legal objects. The answers to the issues about their nature, role and types, the motivations of states to include them in a constitution structure [5], along with the constitutional prolog content interpretation contribute to a better understanding of a constitution itself. We will carry out their research using the example of Russia and 15 other Eastern European countries.

### METHODOLOGY

Various general scientific methods and the methods of logical cognition are used in the work: system, analysis and synthesis, abstraction and formal logical approach. The development of the topic was facilitated by the use of linguistic-legal, formal-legal, comparative-legal methods, as well as by content analysis.

### DISCUSSION AND RESULTS

The analysis of the constitutional texts of Russia [6] and 15 Eastern European states [7] showed that only three of them - Bosnia and Herzegovina, Slovakia and Czech Republic - named the opening part of their constitutions as a preamble. Russia and 8 other countries of the above-mentioned focus group, including Albania, Bulgaria, Lithuania, Macedonia, Poland, Slovenia, Croatia, Estonia left the opening part of their

constitution unnamed. Two states, Latvia and Romania, were limited by one "nameless" introductory phrase in the constitutional text. Hungary and Cyprus did not include a constitutional prologue.

Let us analyze the content of "constitutional prologs" in order to reveal their common and special features. To order such an analysis, it is advisable to identify a number of key criteria relating to the subjects and a constitution establishment procedure; the characteristic features of a state and society. Additional evaluation features are also highlighted within their limits.

We consider the criterion reflecting a subject/subjects and the procedure for a constitution establishment as the initial one. The analysis of "constitutional prologue" texts gave the grounds to single out two types of subjects for the adoption of constitutions - social and institutional one.

People were the most typical social subject of a constitution establishment, which was concretized in conjunction with the name of a state ("the people of Albania", "the people of Estonia"), with national-state coloring ("the Latvian people", "the Lithuanian people"). The Constitution of Russian Federation integrated both approaches, since its founder is the "multinational people of Russian Federation". The complex characteristic of the social "constitution founder" is represented in Poland ("The Polish people - all citizens of the Republic"), in Slovenia ("... based on the will of the Slovenian people and the population of the Republic of Slovenia"). The nation ("the Slovak nation") and citizens ("the citizens of the Czech Republic, Moravia and Silesia") are defined by other social subjects.

A special mention deserves the approach implemented with regard to the social "founder of the constitution" in the Preamble of the Constitution of Bosnia and Herzegovina. The answer to the question "Who are the People in the Preamble to the Constitution?" [8] is given in detail: they are "... the Bosnians, Serbs and Croats as the peoples (along with others) that make up the country population, and the citizens of Bosnia and Herzegovina hereby accept ... the Constitution ... ". Let's note that in this case, the "population of the country" and "the citizens of Bosnia and Herzegovina" are divided.

Institutional "founders of the constitution" are defined along with the social ones, who carried out this independently or together with people. Thus, the anonymous analogue of the Bulgarian Constitution preamble recorded: "We, the people's representatives of the Seventh Grand National Assembly, in an effort to express the will of the Bulgarian people ... adopt this Constitution". Latvia also took the way of social and institutional subject integration and defined that "the Latvian people, in their freely elected Constituent Assembly, adopted the following Constitution of the state". Let's note that in this case the full text of the constitutional prologue is given.

An exclusively institutional approach was implemented in Macedonia ("The Assembly of the Republic of Macedonia adopts the Constitution of the Republic of Macedonia"), Romania ("The Constituent Assembly adopts the Constitution of Romania", and this is the full text of the constitutional prologue) and Croatia ("... The House of Representatives of the Croatian State Sabora at its meeting ... approved the verified text of the Republic of Croatia Constitution ... ").

The "verbal series", which describes the constitution adoption, is also of interest. According to the most typical variant (in 10 states out of 14 ones) it was "adopted" (Russia, Albania, Bulgaria, Bosnia and Herzegovina, Macedonia, Romania, Slovakia, Slovenia, Czech Republic, Estonia). In Latvia, it was "established", in Lithuania it was "accepted and proclaimed"; In Poland it was "introduced"; In Croatia it was "approved".

Still we believe it is important to emphasize that the constitutional prologues of a focus group of countries indicate specific legal acts. Thus, Bosnia and Herzegovina is guided by "... the purposes and the principles of the United Nations Charter, ... in accordance with the norms of international law, ... the Universal Declaration of Human Rights, the International Covenants on civil and political rights and on economic, social and cultural rights and the Declaration of person rights, belonging to national or ethnic, religious

and linguistic minorities, as well as by other documents about human rights, referring to the basic principles agreed in Geneva on 8th of September, 1995 and in New York on 26th of September, 1995 ... "; Lithuania establishes "... a legal foundation on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania ..."; Slovenia expresses its readiness to negotiate "... on the basis of amendments LXVIII, LXXII and XCIX to the Constitution of the Republic of Slovenia, as well as in accordance with the article 4 of the Plebiscite Act on the independence of the Republic of Slovenia ..."; The verified text of the Republic of Croatia Constitution "includes the Constitution of the Republic of Croatia ..., as well as the amendments and the additions to the Constitution ..."; The people of Estonia "... adopted the Constitution on the basis of Article 1 of the Basic Law that came into force in 1938". Such a method, used in constitutional prologues, brings a legal spirit in them.

The next group of criteria, which we have singled out for a meaningful analysis of constitutional prologs, concerns the characteristic of a state. Proceeding from the principle of sovereign equality of states, let us consider how sovereignty is reflected in the studied compositional parts of the constitutions of Russia and the Eastern European countries. The primary analysis showed that half of them (Albania, Bulgaria, Lithuania, Poland, Slovakia, Czech Republic, Estonia) does not mention sovereignty. In the remaining countries sovereignty reflects the sign of a state (Macedonia, Croatia), the property of statehood (Russia) and the corresponding principle (Bosnia and Herzegovina). At that, Slovenia used the semantic analogues of sovereignty - independence - and applied them to a state.

It should be noted that, allegedly a logical reflection in the constitutional prologues of a state territorial characteristics was realized only twice. The Preamble of Bosnia and Herzegovina Constitution recognizes the adherence to the principle of "territorial integrity" in accordance with the norms of international law, and Slovenia emphasized the respect of the "territorial integrity" for other Yugoslav republics.

States are evaluated from a democratic perspective traditionally. In constitutional prologues they defined themselves as the democratic state of Albania, Bulgaria, Macedonia, Croatia and the Czech Republic. Besides, democracy is mentioned as a development reference point (Slovenia), attached to the statehood (Russia), to other states (Slovakia, Czech Republic), the form of government (Slovakia), state institutions (Bosnia and Herzegovina), decision-making method (Poland).

Let us note that constitutional prologs in some cases reflect such a developmental benchmark as a law-governed state. The determination to build/create it was expressed by Albania and Bulgaria; The desire for it was expressed by Lithuania; The Czech Republic expressed the desire to be guided by its principles.

Along with the rule of law, other programmatic guidelines are quite logically mentioned in the constitutional prologs. They include: the desire to "ensure prosperity and welfare" (Russia); "to promote common prosperity and economic growth" (Bosnia and Herzegovina); "to state the guarantees of free life, the development of spiritual culture and economic prosperity" (Slovakia); "to preserve and develop the inherited natural and cultural, material and spiritual wealth jointly" (Czech Republic); "To build ... a social state that ensures the basic human rights and freedoms, based on religious tolerance and coexistence of religions" (Albania); "to create ... a social state" (Bulgaria); "towards an open, just, harmonious civil society" (Lithuania); to ensure "social justice, economic well-being and the progress in personal and social life" (Macedonia); "to provide civil rights, and the activities of public institutions, to ensure good faith and clarity" (Poland). The abovementioned formulations confirm not only the doctrinal [9, p. 123-125], but also a formal recognition of the constitution programmatic nature.

It is worth to note the approach presented in the constitutional prologues, when states position themselves in relation to other countries and/or their associations. Thus, Slovenia expresses its firm determination to "respect the equal rights of other Yugoslav republics"; Slovakia emphasizes the importance of "permanent peaceful cooperation with other democratic states". In the relevant part of the Constitution of Russia the

multinational people have recognized themselves as "the part of the world community", and Albania approves "the cooperation between nations".

Thus, constitutional preambles are very representative and represent a state in static and dynamic, real and ideal characteristics.

We believe it is interesting to highlight the aspects of responsibility that are reflected in the studied composite parts of the specified group of countries constitutions. Let's note that the responsibility is mentioned only in four of them: in relation to a state as a subject of "common responsibility" (Czech Republic) and in relation to people (Russia, Albania and Poland). At that, the multinational people of Russia proceeds from the responsibility "for their Motherland before present and future generations"; The people of Albania are responsible "for the future"; The Polish people are responsible "before God or before their own conscience".

Constitutional prologues contain very versatile characteristics not only of an ideal state, but also of a perfect society. This is realized, for example, by the indication of values, ideals and priorities with the designation of the basic positions within moral, religious and traditional aspects [10]. Note that the values in the law are formulated as the postulates or principles to reflect the essence of legal regulation, law enforcement and legal awareness. "For example, according to Albania version, the "highest values of humanity" are represented by justice, peace, harmony and cooperation between nations; According to Bulgaria, the "universal values" include freedom, peace, humanism, equality, justice and tolerance; According to the Czech Republic, human dignity and freedom are among the "inviolable values". Apparently, the most recognized values are freedom and justice, which we consider quite legitimate [11].

The priority and supporting foundations of society and social development in the constitutional prologues include: "human rights and freedoms, civil peace and harmony" (Russia); Respect for the dignity, freedom and equality of people (Bosnia and Herzegovina); Human rights, civil liberties and national equality (Macedonia); The inherent dignity of a person, his right to freedom and the obligation to "express solidarity with others" (Poland); Equality, liberty, human and citizen rights (Croatia); Respect for human rights and the principles of civil society (Czech Republic). Here, the priority of human rights and freedoms is obvious, which is further confirmed and specified in constitutional provisions.

The leitmotif of most constitutional prologues of Eastern European countries is the mention of basic historical roots and continuity. As a rule, this is reflected in a short version, for example, the honoring of "ancestors memory who gave us love and respect for the Fatherland, the faith in good and justice" (Russia); The fullness of self-awareness and a sense of "pride for own history" (Albania); The embodiment of the natural right "of a man and people to live freely and create on the land of their fathers and ancestors" (Lithuania); The memory "about the political and cultural heritage of their ancestors and the hundred-year experience of the struggle for national existence and own statehood (Slovakia); the loyalty "to all good traditions of the historical statehood concerning Czech royal lands and Czechoslovak statehood" (Czech Republic). The constitutional prologue of Poland demonstrates the gratitude to "ancestors for their work, for their struggle for independence, which cost enormous sacrifices, for a culture rooted in the Christian heritage of People and universal values", the continuation of the best traditions of the First and Second Republics, obliged to give all that is valuable, which was extracted for more than a thousand years, to future generations". At the same time, the attention was drawn to the conflict of the symbols and values mentioned here during a national state development [12].

The historical and traditional part is presented in detail within the constitutional prologues of Macedonia, Slovenia, Croatia, where, among other things, the common roots associated with the staying in a single state - Yugoslavia - are noted.

The ethnic-national aspects of constitutional prologs also deserve mentioning. They were fixed through generally recognized principles of people equality and self-determination (Russia); "Proceeding from the century-old aspiration of the Albanian people about ... the national unity" (Albania); "cognizing their unshakable duty to preserve national ... unity" (Bulgaria); "striving for national agreement on the land of Lithuania"; Through the provision of national equality, peace and coexistence of "Macedonian people with other nationalities living in the Republic" (Macedonia); Through the natural right of nations to self-determination, together with the representatives of national minorities and ethnic groups living on the territory of the Republic (Slovakia); Through the appeal "to ensure the preservation of the Estonian nation and culture for ages" (Estonia).

The ethnic-national aspect of state and public development is most carefully prescribed the constitutional prologue of Croatia, where it is stated that "... The Republic of Croatia is created as the national state of the Croatian people and as the state of other people and national minority representatives who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are provisioned with equal rights along with the citizens of Croatian nationality and the compliance with national rights in accordance with the democratic norms of the United Nations ...".

## CONCLUSIONS

States, realizing their sovereign will in respect of their constitution introductory part presence or absence, the title of its preamble or a nameless preference, made the basis not only for the search of their integrative name, but also for meaningful analysis. We propose to name the constitutional preambles and their unnamed analogues as "constitutional prologues".

The content of constitutional prologues among Eastern European states made it possible to identify the subjects and the procedure for a constitution creation, the characteristic features of a state and society as key evaluation criteria, within which the additional ones also appear. The analysis carried out with their consideration made it possible to disclose the general and special approaches of the states within the mentioned focus group.

The constitutional prologues of the Eastern European states determined social and institutional subjects of a constitution creation, and social names are named in most of them, and the most typical way to "establish" a constitution is to adopt it.

States in constitutional prologues are characterized both from the position of signs (sovereignty) and principles (territorial integrity, democratic principles, responsibility) of a state, and taking into account ideal landmarks (a legal and a social state).

The society in the constitutional prologues of Eastern European states is also described from the point of view of ideality through the indication of values, ideals and priorities with a designation of the basic positions within moral, religious and traditional aspects. The preference is given to freedom and justice, as well as to human rights.

Summing up, we note that, even without the use of legal force resource, constitutional prologues make it possible to understand the approaches, the values, the pillars, the priorities and the guidelines for the constitutional development of Eastern European states. They act as the messages to the internal and external environment. The comprehension of such message meaning should contribute ideally to the development of a "value ground" to ensure civil peace and harmony, for the cooperation of states on the basis of their agreed goodwill.

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