

Artículo de reflexión

Inadmissibility of experiments on people: constitutional imperatives of the post-soviet countries

Inadmisibilidad de experimentos con personas: imperativos constitucionales de los países postsoviéticos

Inadmissibilidade de experimentos em pessoas: imperativos constitucionais dos países pós-soviéticos

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Abstract

The article revealed typical and peculiar contexts, based on the analysis of the constitutional texts of CIS countries concerning the reflection of compulsory experiments on people prohibition. The approaches of states concerning the forbidden types of experiments on people were studied and, taking this into account, the conclusion is made about the advisability of prohibitive formulations by the analogy with those that are implemented in constitutional provisions on the inadmissibility of discrimination on any grounds. It was noted that with all the differences in the approaches of this group of states, they are all determined by the constitutional imperative of experiments on people inadmissibility.

Key words: constitution, inadmissibility of compulsory experiments on people, dignity of an individual, prohibition of torture.

Resumen

El artículo reveló contextos típicos y peculiares, basados en el análisis de los textos constitucionales de los países de la CEI sobre el reflejo de los experimentos obligatorios y su prohibición con personas. Se estudiaron los enfoques de los estados sobre los tipos prohibidos de experimentos con personas y, tomando esto en cuenta, se llegó a la conclusión sobre la conveniencia de formulaciones prohibitivas por la analogía con aquellas que se implementan en disposiciones constitucionales sobre la inadmisibilidad de la discriminación por cualquier motivo. Se observó que con todas las diferencias en los enfoques de este grupo de estados, todos están determinados por el imperativo constitucional de los experimentos sobre la inadmisibilidad de las personas.

Palabras clave: constitución, inadmisibilidad de experimentos obligatorios sobre personas, dignidad de un individuo, prohibición de tortura.

Resumo

O artigo revelou contextos típicos e peculiares, com base na análise dos textos constitucionais dos países da CEI sobre o reflexo de experimentos compulsórios sobre a proibição de pessoas. As abordagens dos estados sobre os tipos proibidos de experimentos em pessoas foram estudadas e, levando isso em conta, a conclusão é feita sobre a conveniência de formulações proibitivas pela analogia com aquelas que são implementadas em disposições constitucionais sobre a inadmissibilidade da discriminação por qualquer razão. Notou-se que, com todas as diferenças nas abordagens desse grupo de estados, elas são todas

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determinadas pelo imperativo constitucional de experimentos sobre inadmissibilidade de pessoas.

Palavras-chave: constituição, inadmissibilidade de experimentos compulsórios em pessoas, dignidade de um indivíduo, proibição de tortura.

Introduction

An experiment as a method of cognition, the obtaining of new results, the mechanism of phenomenon and process optimization is immanent in the scientific environment. The legal sphere also seeks to comprehend the potential of the experiment, referring, for example, to experimental jurisprudence (Keshtkar, M.M and Ghazanfari M., 2017), its nature and methods (Beutel F.K., 1971), to the experiments with truth (Keshtkar, M.M, 2013), etc.

Constitutional legal science studies the constitutional experiments carried out in different countries (Hosking G.A., 1973; Hayden R.M., 2005; Khawam J., 2005; Cairns A.C., 1984) and regions (Bermann G.A., 2004); concerning the adoption of the constitution (Landemore H., 2015), the organization of power (Bose F., 2010); affecting human rights and freedoms (John Witte, 1996). Besides, the constitution itself is regarded as an experiment (Bahador, M and Keshtkar M.M., 2017), as well as the local experiments in connection with constitutional variability (Keshtkar, M.M, 2013).

At the same time, there are almost no developments concerning the prohibitions of forced experiments on people. Filling in this gap, let's analyze the constitution texts of the post-Soviet countries concerning the reflection of such an imperative in them.

Methodology.

The study was based on the dialectical approach to the study of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private-scientific methods. The latter includes formal-legal, linguistic-legal, comparative-legal method, which were collectively used to study the constitutional texts of 12 post-Soviet countries, taken from the Internet library "Constitution of the states (countries) of the world" (<http://worldconstitutions.ru/>) in order to reveal the variants and the peculiarities of prohibition fixation concerning the conduct of forced experiments on people. The choice of this focus group is conditioned by the generality of the previous constitutional construction within the

USSR and an equal term of sovereign post-Soviet development. This allows us to expect, on the one hand, the unity of the post-Soviet countries to the constitutional consolidation of the inadmissibility imperative concerning the involuntary experiments on people, on the other hand, the sovereign diversity in its formulation.

Discussion and results

First of all, let's note that among 12 constitutions of the post-Soviet countries, the texts of four (Georgia, Kazakhstan, Moldova and Uzbekistan) do not have any references about the experiment / the experience in the sense of cognition method. At that, only Moldova signed the CIS Convention on Human Rights and Fundamental Freedoms of 1995 (The CIS Convention on Human Rights and Fundamental Freedoms (Minsk, May 26, 1995)), the Art. 3 of which reflects the coordinated will of the states concerning the experiments on people: "No one can be subjected to medical or scientific experiments without their free consent". Let us note that this imperative is stated in connection with another "humanitarian absolute" - the prohibition of torture or a cruel, an inhuman or a degrading treatment or punishment. Such contextual conjugation of experiments on people is presented in the constitutions of Azerbaijan, Armenia, Belarus, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Ukraine. At the same time, the states managed to present here their own, interesting approaches, in our opinion. So, along with the indicated conjugation, constitutionally addressed to everyone, the concretization was carried out concerning the arrested persons, prisoners and the persons deprived of their liberty (Article 17 of the Constitution of Armenia). The prohibition of experiments on people is also expressed in the context of state freedom provision and the inviolability of a personality (Article 25 of the Constitution of Belarus), the protection of an individual dignity by state and the exclusion of grounds for its belittling (Article 21 of the Constitution of Russia), the right to life, the inadmissibility of its arbitrary deprivation and a person's inviolability (Article 18 of the Constitution of Tajikistan).

The analysis of the constitutional texts made it possible to identify the prohibited types of





experiments on people. First of all, all states are united in the fact that violent experiments are prohibited: "without consent" (Part III of the Article 46 of the Constitution of Azerbaijan, Article 17 of the Constitution of Armenia, paragraph 3 of the Article 25 of the Constitution of Belarus, paragraph 2 of the Article 21 of the Constitution of Turkmenistan); "Without a voluntary consent" (Part 2, Article 21 of the Constitution of Russia, Article 28 of the Constitution of Ukraine); "Without a voluntary consent, expressed and duly certified" (Part 3, Article 22 of the Constitution of Kyrgyzstan); compulsory (Article 18 of the Constitution of Tajikistan).

We believe that the presumption of voluntariness is formulated most fully in the Constitution of Kyrgyzstan, which stipulates not only the voluntariness of the consent itself, but also the voluntariness of its expression, duly certified (Antón Chávez, 2017). We consider it necessary to pay attention to constitutional lexical decisions, through which the inadmissibility of experiments on people was recorded. Thus, the compulsory experiments "can not be carried out" (Azerbaijan), "forbidden" (Tajikistan); "no one can be subjected to them" (Armenia), "they are forbidden" (Kyrgyzstan), no one "should/can be exposed" (Belarus, Turkmenistan), "they can not be performed" (Russia, Ukraine). Consequently, in some cases, the forced experiments on people are prohibited as a phenomenon; in other cases a prohibition is set, addressed to all potentially capable of its performance; thirdly, the prohibition against people is expressed through the negation word "nobody" (Belarus, Russia, Turkmenistan), "no one" (Azerbaijan), "no one" (Ukraine) or through a direct indication "a man" (Armenia, Tajikistan), "people" (Kyrgyzstan).

The approach reflected in the Constitution of Kyrgyzstan is interesting. So, the provisions on the prohibition of compulsory experiments on people are set out in two articles - art. 20 (Chapter I. Fundamental Rights and Freedoms) and Art. 22 (Chapter II, Human Rights and Freedoms). Part 4 of the Art. 20 stipulates that "the guarantees of the prohibition established by this Constitution are not subject to any restrictions: ... 2) the performance of medical, biological, psychological experiments on people without their voluntary consent, duly expressed and certified ...". Part 3 of the Art. 22 prohibits "to conduct medical, biological, psychological experiments on people without their voluntary

consent, expressed and certified properly." Let's note that at the coincidence of the "prohibitive formulation" it is determined in the first case by the need to establish additional guarantees for the inadmissibility of restrictions concerning this prohibition and is attributed to the fundamental rights and freedoms according to the title of the chapter, and in the second case the prohibition is set on the conduct of such experiments, which is referred to human rights and freedoms.

Further analysis of the constitutional texts also made it possible to systematize the types of prohibited compulsory experiments. These include medical, scientific and other (Azerbaijan, Armenia, Russia, Ukraine); medical or other (Belarus, Turkmenistan); medical, biological, psychological (Kyrgyzstan) experiments; medical and scientific experiments (Tajikistan) (Aleksandrovna Maximova and Aleksandrovich Belyaev, 2017). We believe that in this case it is more advantageous to use so-called open formulations that include the phrase "... and others", since it is impossible to envisage all potential types of experiments for a prohibition.

Conclusions.

In most constitutions of the post-Soviet countries, the prohibition of coercive experiments on people is recorded as an imperative with varying degrees of specific concretization.

Constitutionally prohibited types of experiments on people are the violent ones, which are conducted without a voluntary consent, expressed and certified properly. In our opinion, this formulation reflects the meaning of prohibition most accurately.

The compulsory medical, biological, psychological, scientific and other experiments on people are also prohibited constitutionally. Such a constitutional specification of the prohibited types of experiments underlines their particular danger, and an open list allows to extend the prohibition on any of their types.

A typical context for the prohibition of involuntary experiments on people in the constitutions of post-Soviet countries is the prohibition of torture or a cruel, an inhuman or a degrading treatment or punishment. Along with this, the right to life, the inadmissibility of its arbitrary deprivation, the inviolability of a person and his dignity are indicated.

Thus, the constitutional imperative of experiments on people inadmissibility in the post-Soviet countries contains common and special features reflecting the sovereign will of a state.

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