
LIAV ORGAD: THE CULTURAL DEFENCE OF NATIONS. A LIBERAL THEORY OF MAJORITY RIGHTS

A.H. Abashidze, M.V. Ilyashevich

Peoples' Friendship University of Russia
Law Institute

6, Miklukho-Maklaya, Moscow, Russia, 117198

The article is a review of the scientific monograph of Liav Orgad «The cultural defence of nations. A liberal theory of majority rights» (Oxford, University Press, 2015. 273 pp.). The present review summarizes the provisions, in which the author of the monograph under review analyzes the approaches of modern states to address the problem of preservation of national identity in the face of the threat posed by large migration flows. It also offers an assessment of the conclusions made by the author of the monograph under review as a result of observing of national legislation from the standpoint of constitutionalism, in particular, coming to the conclusion that in the present conditions developed states are often «forced» to abandon the democratic values, which in itself is absurd. The author of the monograph under review also makes an attempt to justify the need to protect «the rights of the majority», along with «minority rights», relying on fundamental international instruments for the protection of human rights, which is also reflected in this article. The monograph endeavors to define the concept of «national identity» and what it means for each individual state using the example of such as the United Kingdom, Germany, France, the Netherlands and the United States of America — this review provides a summary and critical evaluation of key points put forward by the author of the monograph under review in this regard.

Key words: cultural rights, majority groups, national identity, constitutional theory, human rights

The book is an excellent and solid work, which offers to a wide range of readers a research on a very relevant topic in present-day conditions. Today, in the age of technological progress and the era of globalization for the states, due to blurring of lines and the almost complete lack of capacity to limit huge flows of information of a different kind, is more than ever difficult to preserve their national identity. At the same time public international law recognizes that independent establishment of conditions for the admission of persons to the territory and for the naturalization process is a fundamental right of every sovereign state. No one would argue with the assertion that immigration flows, unprecedented in scope, represent a serious challenge to the preservation of cultural uniformity and integrity of states. The migration process occurs for various reasons, regardless of which all states are equally interested in limiting the increase in the number of migrants on their territory in order to avoid major changes that accompany the processes associated with the influx of large numbers of people with a different past, worldview, religious beliefs, lifestyle, etc. However, at the same time it is obvious that the population in traditionally prosperous countries is rapidly declining, putting before them the problem of finding appropriate approaches to overcome the demographic crisis. In the perception of the author, one of the accessible for a state ways to tackle the problem in the present situation would be the admission of migrants to its territory. This process, as rightly notes the author, is accompanied by many challenging issues, analyzed in the present book.

The book examines the problem of the protection of national identity in the light of immigration policy, from the point of view of contemporary international law, moral philosophy and the ideas of constitutionalism.

The book consists of two parts. The first part of the book contains an analysis of prerequisites, which eventually lead states to the need of taking measures to protect the national identity. The author rightly points out that one of the most difficult issues, which still falls on deaf ears, is what in fact the national identity is. Each state has a fundamental interest in preserving the national identity, but no one is in position to intelligibly articulate the essence of this notion.

Today nation-states are more than ever concerned with the influx of migrants, which eventually led them to the movement from the multiculturalism policy to the «protectionism» and the practice of forced integration of immigrants into national society. Measures taken in order to minimize immigration flows by imposing burdensome requirements are at times nothing else than an effort to protect the national identity and democratic institutions, as part of the identity, from the outside invasion.

The author considers relevant issues on the example of such countries as the United States of America (the state, which has considerable experience in the treatment of migrants), a number of Member States of the European Union (Britain, France, Germany and the Netherlands), as well as Israel. Each of these states has developed in certain circumstances, which left an imprint on the national idea, cultural traditions and belief system. Each of these democracies feels concern, in particular, due to the fact that the considerable influx of migrants, the most part of which are Muslims, would jeopardize the democratic achievements: institutions and principles. They also employ different approaches to solving the problem of protection of the national identity.

The book analyzes current practice of states, addressing the question, how far nation-states may go in the formulation of their immigration policies in an attempt to «save» their national identity without renouncing the democratic system of values.

In the second part of the book the author explores from the standpoint of democratic liberalism the procedures utilized by nation-states throughout their existence with the purpose of limitation of the influx of migrants to their territory and of their integration into the society at any cost. He rightly concludes that nowadays states are actually crossing the line using illiberal methods in their immigration policy, in fact, violating the very principles they are eager to protect. With the view to protect the national identity the author unexpectedly argues the need of entrenchment of the new concept of the «rights of the majority». This concept is not always applicable, but only in cases where there are certain prerequisites. Indeed, under normal circumstances, the «majority» (the definition of «majority» itself poses a difficult problem) is not in need of protection, as it has mechanisms to protect appropriate interests by virtue of the very fact of domination. At a time when the international and national law protects minorities rights (meaning national minorities, indigenous peoples, etc.), the «majority rights» may also need protection for the same reason. The author via concrete examples analyzes different situations where the granting of this kind of protection can be justified.

The author also proves that the best approach for the purpose of protecting of national identity is the concept of national constitutionalism, which is to be implemented in two stages. According to the concept, a prerequisite for the admission of an individual to the territory of the state is an acceptance by him of the liberal-democratic principles generally; at the same time the condition for the naturalization is the recognition of fundamental constitutional principles, characteristic for that particular state. Therewith it means not so much the document — the Constitution, but the whole system of values prevailing in a particular State and meeting the criteria of legality and justice.

The book is a comprehensive research on the ground of complex approach while dealing challenging issues, performed on the basis of analysis of a large amount of material — from statistics to the decisions of both international and national judicial organs, international legal acts, acts of national legislation.

The author offers a new approach to solving one of the most pressing problems of our time, and in this sense the book can be recommended to the attention of a wide range of readers as a valuable source of knowledge, stimulating further reflections in this direction.

ЛИАВ ОРГАД: КУЛЬТУРНАЯ ОБОРОНА НАЦИИ. ЛИБЕРАЛЬНАЯ ТЕОРИЯ ПРАВ БОЛЬШИНСТВА

А.Х. Абашидзе, М.В. Ильяшевич

Российский университет дружбы народов

Юридический институт

ул. Миклухо-Макляя, 6, Москва, Россия, 117198

Статья представляет собой обзор научной монографии Лиав Оргада «Культурная оборона нации. Либеральная теория прав большинства» (Oxford, University Press, 2015. 273 с.). В рецензии приводятся положения рецензируемой монографии, в которых автор анализирует подходы современных государств к решению проблемы сохранения национальной идентичности перед лицом угрозы, которую представляют большие миграционные потоки. Также делается оценка выводов, к которым автор рецензируемой монографии приходит в результате обзора национального законодательства с позиций конституционализма, в частности, приходя к заключению, что в современных условиях государства зачастую «вынуждены» отказываться от демократических ценностей, что само по себе является абсурдным. Также автор монографии предпринимает попытку обосновать необходимость защиты «прав большинства» наряду с «правами меньшинства», опираясь на основополагающие международно-правовые акты в области защиты прав человека, что также нашло отражение в настоящей статье. В монографии предпринимается попытка определить понятие «национальная идентичность» и что оно означает для каждого отдельного государства на примере таких, как Великобритания, Германия, Франция, Нидерланды и Соединенные Штаты Америки — в настоящей статье содержится изложение и критическая оценка основных положений, выдвигаемых автором рецензируемой монографии в этом отношении.

Ключевые слова: культурные права, группа большинства, национальная идентичность, конституционная теория, права человека