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Legal Aspects of the authoritarian regime in Latin America

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Abstract

The purpose of the article was to study the legal aspects of the authoritarian regime in some Latin American countries. The research methodology included the use of general and special scientific methods of knowledge, such as: dialectic, historical-legal, formal-logical, hermeneutics, generalization and comparison. It should be pointed out that the results of the research identified four Latin American countries with authoritarian regimes (El Salvador, Cuba, Nicaragua and Venezuela). The legal aspects of the authoritarian regime of each selected country were considered. In addition, different areas of analysis were covered and characterized in the course of the work: (government, protection of human rights, freedom of expression, legislation and prisoners' rights). It was concluded that each of these countries has common legal aspects of authoritarianism, including the concentration of power in the hands of the president or government, control of the judiciary and legislature, within the framework of dynamics of corruption and systematic violations of human rights.

Keywords: authoritarianism; Latin America; legal aspects; political regime; rule of law.

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Aspectos jurídicos del régimen autoritario en América Latina

Resumen

El propósito del artículo fue estudiar los aspectos legales del régimen autoritario en algunos países de América Latina. La metodología de investigación incluyó el uso de métodos científicos generales y especiales de conocimiento, tales como: el dialéctico, histórico-legal, formal-lógico, hermenéutica, generalización y la comparación. Conviene precisar que en los resultados de la investigación se identificaron cuatro países latinoamericanos con régimen autoritario: (El Salvador, Cuba, Nicaragua y Venezuela). Se consideraron los aspectos legales del régimen autoritario de cada país seleccionado. Por lo demás, en el curso del trabajo se abarcaron y caracterizaron distintas esferas de análisis: (gobierno, protección de los derechos humanos, libertad de expresión, legislación y derechos de los presos). Se concluyó que cada uno de estos países tiene aspectos legales comunes del autoritarismo, incluida la concentración de poder en manos del presidente o el gobierno, el control del poder judicial y legislativo, en el marco de dinámicas de corrupción y violaciones sistemáticas de los derechos humanos.

Palabras clave: autoritarismo; América Latina; aspectos legales; régimen político; Estado de derecho.

Introduction

There has always been the struggle between good and evil, light and dark, democracy and fascism, freedom of speech and dependence (Panchenko *et al.*, 2022). It is argued that unquestioning obedience to authority is a fundamental factor in ensuring public order and security, as well as preventing chaos and causing any harm to the state regime. Interestingly, it is inherent only in supporters of authoritarianism – a political regime characterized by centralized, but at the same time, concentrated power, which is in the hands of the government or the president.

Authoritarianism has clear features that distinguish it from other regimes: 1) limitation of political pluralism, legislative power and political parties; 2) political legitimacy; 3) suppression of anti-regime activities; 4) executive powers are not defined, which allows them to be abused, etc.

Thus, countries with an authoritarian regime are characterized by:

- the absence of free and competitive elections;
- the change of government over a long period of time and the violation of civil rights and human freedoms.

A vivid example of the neglect of democratic values and other legal elements are the countries of Latin America – El Salvador, Cuba, Nicaragua and Venezuela, which have confirmed signs of authoritarian rule. A few more – Guatemala, Bolivia, Haiti, Honduras (countries of Latin America and the Caribbean) have hybrid authoritarian-democratic regimes (Ramírez, 2022). This indicates that the number of authoritarian regimes in the region is growing, so the topic we have chosen is quite relevant for its study.

The study of the legal regime of the Latin America countries allows on the other hand to look at the interests of ruling elites, which are accompanied by anti-legal methods of governance: corruption, breach of human rights, restriction of freedom of speech, falsification of elections, concentration of power in the hands of the president, etc. Therefore, we consider it necessary to examine the legal aspects of the authoritarian regime prevailing in El Salvador, Cuba, Nicaragua and Venezuela in detail, which is the aim of our research.

1. Methodology

The methodological basis for the research is the complex use of principles and means of philosophical, general scientific and theoretical and legal approaches, as it is necessary to provide quality methodological support (Kharytonov *et al.*, 2021). The authors proceed from the unity of socio and legal and epistemological analysis, objectivity, historicism, concreteness.

- Systemic method helped to allocate Latin America countries with authoritarian regime.
- Structural and functional method made it possible to identify the features of authoritarian regime, as well as legal aspects of the authoritarian regime of the selected countries.
- Comparative and legal method was used to compare the process of authoritarian dynamics in the least democratic Latin America States.
- Historical and analytical, as well as retrospective methods were applied to investigate the development of authoritarian characteristics in the *mode of government* in the named counties.
- Formal and legal method was helpful when defining the legal nature of the state regime in the selected countries and in the scientific processing of legal materials.
- Summarization method was used to determine general legal aspects of authoritarianism.

2. Literature Review

In the process of preparation, we got acquainted with many fundamental works devoted to this topic, which are of great scientific interest.

Ronald Chacín Fuenmayor in his study “The new Latin American authoritarianism: A challenge for democracy and human rights (analysis of the Venezuelan case)” (2019), using theoretical and political approach, focuses on the problem of authoritarianism in Venezuela. The author also emphasizes that the country is characterized by violations of values, principles, constitutional and fundamental human rights.

Botero’s work entitled “The Rule of Law in Latin America: From Constitutionalism to Political Uncertainty” (2019) is quite interesting in this aspect. The author thoroughly characterized the rule of law in the region and the problems that arise in the way of compliance: regression of democracy, constitutional promises, inability of countries to control their territory, violence, the lack of independence of the judicial system, corruption, hyper-presidency and inequality [3].

The study by Fuenmayor and Orozco “Conflict between Democracy and Authoritarianism in Latin America: The Role of the Judiciary” (2019) is also noteworthy. The scholars examine the crisis of democracy in the countries of Latin America – Venezuela, Bolivia and Nicaragua, and also describe how the government exercises control over the judiciary and with its help consolidates authoritarianism in the territory.

Rodríguez-Pinzón and Rodrigues (2020) demonstrate that the violent actions of the governments of certain Latin American countries are a way to destroy the rule of law. In their work “Mano dura” and Democracy in Latin America: Public Security, Violence and Rule of Law”, the authors analyze the experience of four countries – Brazil, Mexico, Colombia and Guatemala through the prism of “violent pluralism”.

López and Quevedo Pereyra (2021) point out that Latin America is going through a stage of asymmetric development, observing polarization – from states with a high level of democracy, such as Costa Rica, Uruguay, Chile, to authoritarian – Cuba, Nicaragua and Venezuela. The authors examine the authoritarian regimes of Nicaragua, Venezuela, Honduras, and Bolivia, and conclude that the Latin American continent is experiencing a gradual minimization of political and social rights, democratic values, and the separation of powers.

Clearly, these works are quite valuable achievements in relation to the fact that at present the issue of authoritarianism and the fight against it in the civilized world arises more and more often. However, the number of studies devoted to the legal aspects of the authoritarian regime of Latin American countries is quite small. Therefore, we believe that there is a need for a comprehensive study of this topic.

3. Results and Discussion

Legal norms in the countries of Latin America have always been considered as an important social phenomenon. After all, on the one hand, the law allows for the regulation of social relations, and on the other hand, it “organizes a heterogeneous and complex social reality” (Villegas and Rodríguez, 2003: 33). The best example of this is the Latin American experience – the experience of the struggle between the legal norms of authoritarianism and democracy.

It is no secret that authoritarianism is on the rise and democracy is on the decline. This fact is confirmed by wars, military coups, transfer (gift) of power, restriction of rights and freedoms, etc.

The least democratic Latin American countries are El Salvador, Cuba, Haiti, Nicaragua and Venezuela, whose governments are authoritarian ones. Along with this, there is a growth of hybrid “authoritarian-democratic” regimes, which now number eight in 2022. This indicates the gradual decline of democracy in the region (Graphic Detail, 2023).

Backsliding

Democracy Index, 2022

Latin America*



Fig. 1. EIU Democracy Index, 2022 (Democracy Digest, 2023).

A change in the political regime always implies modification in social relations, legal instruments, legal culture, public consciousness, etc. First of all, these are targeted actions aimed at changing people's behavior with the help of various legal means – rules and principles of law, law enforcement actions, contracts, legal facts, subjective rights and legal obligations, prohibitions, benefits, realization of rights through separate mechanisms, etc. That is, such legal means carry legal consequences, which determines the effectiveness or nullity of legal regulation.

Analyzing the experience of Latin America, we can conclude that the process of authoritarian dynamics was accompanied and continues to be accompanied by abuse of power, social and cultural values, use of repeated coercive measures, which tends to interfere with established legal norms.

This regime is formed on the ideal of slavery and freedom, independence and subjection, justice and inequality, wealth and poverty. All these signs are rooted in authoritarianism, and are also deeply disguised as democracy. Then the question arises: how to can live in a system of dictatorship, endless struggle, but at the same time promises of freedom, autonomy and independence? Perhaps authoritarianism is the essence of Latin American existence, inherited by culture and time? (Cuevas Silva, 2014).

García Hamilton (2004) notes that “there is an authoritarian political culture in Latin American society – a set of beliefs, feelings, ideas, thoughts and attitudes that make possible accepting guardianship, giving up self-government and situations that often lead to the denial of minority rights, cruelty and genocide”.

That is, countries that maintain the «appearance» of democracy but are dictatorial, violating human rights and freedoms, concentrate power in the hands of one person or elite, fail to adhere to the principle of separation of powers and the rule of law, belong to the category of countries with an authoritarian regime (Borges, 2023).

Therefore, the countries of the Latin American region – El Salvador, Cuba, Nicaragua, Venezuela, which we propose to consider, are a vivid example of authoritarian rule.

a. Salvador

Abuse of power and impunity are the norm. For example, the 2016 trial of the rape and killing of nearly 1,000 civilians, including 553 children, by army soldiers, has been suspended with the support of incumbent President Bukele. And the judge who conducted this process was dismissed due to the fact that he is over 60 (El Salvador 2022).

In 2021, the President and his allies dismiss the Supreme Court judges and remove prosecutors, whose decisions they did not like. Shortly after

that, the judges of the Constitutional Chamber of the Supreme Court issued a ruling on Bukele's candidacy for early re-election, despite the fact that it is prohibited by the Constitution (Human Rights Watch 2021a).

The government also proposed to amend the Constitution and provide for the extension of the president's powers from 5 to 6 years, the reform of democratic institutions, the liquidation of the Constitutional Chamber of the Supreme Court and other changes (Delcid, 2021).

It should also be noted that "control" over certain territories (mainly poor ones) in the country is carried out by armed groups. According to mass media, there are about 60,000 members of the gang (Europa Press Internacional, 2021). Note, that the total population of El Salvador is 6.3 million.

El Salvador ratified the Convention on the Rights of Persons with Disabilities (Naciones Unidas, 2008), adopted the Special Law on the Integration of Persons with Disabilities (CONAIPD, 2021), but the problem of violation of the rights of such citizens still exists. Especially vulnerable are women and girls who are constantly attacked by gangs.

b. Cuba

There is an ongoing economic crisis, which directly affects social and economic rights of the population. Dissent is punished by arrests, intimidation, and bullying (Redacción Radio Televisión Martí, 2023).

Thus, during peaceful protests in July 2021, 17-year-old Gabriela Zequeira Hernández, who passed by the demonstration and witnessed the process, was arrested. She was forced to strip and squat, after which the court imposed an eight-month sentence of deprivation for public disorder. Later it became known that the minor was detained by members of the Special National Brigade of the Cuban government (BBC News Mundo, 2021).

The government controls all mass media and information from abroad. Independent journalism is prohibited in the region. In 2019, the situation with access to the Internet improved, so journalists, researchers, and bloggers were able to report on cases of cruelty against Cuban residents. But the high cost of the Internet and services prevent them from becoming widely known. Along with this, the government blocks access to various websites and blogs, as well as mobile phones (communication) (DDC, 2021).

Law 35/2021 of August 17, 2021 (Consejo de Estado, 2021) establishes that providers should interrupt, suspend or cancel all services (not calls!) when a user publishes or proclaims information that is "false" or affects "public morality".

The Resolution on Cyber Security (Ministerio de Comunicaciones, 2021), published along with the specified Law, also includes provisions on actions, statements contributing to «social indiscipline and damage to the prestige of the country», which must be destroyed.

The government also has the authority to ban departure from (or entry into) the country in order to protect national security. For example, Cuban journalist Karla Pérez was banned from entering the country after studying in Costa Rica (SAMAN, 2021).

If we talk about detainees and prisoners, there is no mechanism to ensure their rights, in particular to involve a defender or a representative or to report ill-treatment. This is due to the fact that the government does not recognize human rights activities as legitimate. Those who try to do so are subjected to more abuse and denial of medical care. The government also prevents international organizations from inspecting prisons (Human Rights Watch, 2021b).

With regard to violations of labour rights, legislation permits the establishment of trade unions, but de facto only the state-controlled Central de Trabajadores de Cuba trade union operates.

c. Nicaragua

There are strict restrictions on freedom of speech and political discrimination.

In 2016, President Ortega's government abolished all restrictions on presidential power and prevented other political parties from participating in the elections. The latter was elected for the fourth term in a row, which indicates that these elections do not conform to at least universally recognized legal norms the field of the electoral process (McConnell, 2021).

The path to “success” was expressed in the persecution and detention of other government representatives, presidential candidates, members of political parties, journalists, lawyers, businessmen and simply leaders of speech (Human Rights Watch, 2021c).

It is very interesting that in December 2020, the government adopted the Law on the Protection of the People's Rights to Independence, Sovereignty and Self-Determination (Prensa-Asamblea Nacional, 2020), the provisions of which prohibit the above «traitors» to run for and hold public office.

As for law enforcement agencies, the reform of the criminal procedure legislation allowed them to detain a person for up to 90 days without charge (Human Rights Watch, 2021d).

That is, the proper legal procedure for detention and custody is not respected – there are harsh conditions of confinement, bullying, malnutrition and constant interrogations. The authorities prevent the right of a person to have a lawyer, while appointing “their” public defenders.

Nicaragua Nunca and Human Rights Collective report that persecution and oppression by the Ortega government forced journalists to leave the country to escape repression (Broner, 2021).

d. Venezuela

Mysterious disappearances, executions, imprisonment, torture and repression, which have only intensified with the Covid-19 pandemic, have helped the Venezuelan government to further control the country’s population. The judiciary is also fully under the control of the government.

The following armed groups operate in Venezuela: National Liberation Army (el Ejército de Liberación Nacional (ELN)), Patriotic Forces of National Liberation (las Fuerzas Patrióticas de Liberación Nacional (FPLN)), Special Action Forces (las Fuerzas de Acciones Especiales (FAES)), etc., which help maintain the so-called “order” in the territory (Human Rights Watch, 2021e).

The UN Independent Mission found a number of violations in the country that constitute crimes against humanity – abuse of judicial authorities, illegal arrests without warrants, pre-trial detention, torture and lack of evidence (Naciones Unidas, 2022).

Overcrowding, staff shortages, corruption have helped gangs to take control over the prisoners. This is accompanied by a lack of water and food, medical services, and as a result – hunger and deadly diseases.

As for the freedom of speech, the government has absolute authority to regulate the media. In 2017, the Law against Hate (Comité para la protección de los Periodistas (CPJ), 2017) was adopted, which prohibits “promoting fascism, intolerance or hatred” and provides punishment for those who publish “intolerant messages” – imprisonment for a term of up to 20 years.

Another interesting fact is that Venezuela withdrew from the American Convention on Human Rights in 2013 (El país International, 2013). This means that the struggle for human rights in this country is short-lived, but punishment is inevitable.

Thus, after analyzing the legal aspects of the authoritarian regime of the selected countries, it is possible to determine their common features. And in this matter, we fully agree with Ronald Chacín Fuenmayor and Giancarlo Leal Orozco, who note that the authoritarianism of the Latin American region is accompanied by:

- 1) weak institutions of political control;
- 2) concentration of the President's power;
- 3) obsession with the goal of re-electing the President;
- 4) high level of corruption;
- 5) control over the judicial system and other law agencies;
- 6) lack of accountability of state funds;
- 7) democratic elections as a way to come to power;
- 8) no legal restrictions – according to the principle of «will be as I want»;
- 9) adoption of laws limiting people's rights and freedoms;
- 10) aggressive attitude towards their political opponents (Fuenmayor and Orozco, 2019).

Finally, we would like to note the following: the model of legal regulation in the specified countries is ideal to achieve the management goals of the authoritarian leaders «without title»: such a policy does not have legal control, but has signs of abuse of power through law and coercion; the lack of judicial independence helps to rule society with the help of gangs and armed groups; fear and poverty are not an obstacle in the formation of a political system, but a value; corruption is a tool of domination, and human rights violations are the most striking example of the absence of the guiding principle of the rule of law.

Conclusions

The analysis of the research topic allowed us to come to the following conclusions:

International or national legal norms cannot limit the aggressive political power in the conditions of an authoritarian regime. Sometimes, the same legal norms are used in the opposite direction - to violate freedom of speech, personal rights and freedoms, concentration of power, evasion of responsibility for violation of the law or, on the contrary, illegal attraction to it.

We can observe a pronounced authoritarian regime in El Salvador, Cuba, Nicaragua and Venezuela - Latin American countries with rather interesting anti-democratic ways of governing.

The conducted research allowed us to understand that legal awareness, legal culture, and freedom of speech do not work in the selected regions; there is excessive abuse of power, intimidation, falsification of elections,

violations of the rights of detainees and prisoners, armed conflicts and gang activity.

In El Salvador, Cuba, Nicaragua, and Venezuela, the authoritarian regime is an instrument of social control and shares some common features, including: concentration of power in the hands of the president or government, government control of the judiciary and legislature, corruption, and human rights abuses.

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