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PHILOSOPHICAL AND LEGAL RUSSIAN THOUGHT AT THE LATE 19th - EARLY 20th CENTURY PERIOD ON THE STATUS OF FINLAND IN THE STATE STRUCTURE OF THE RUSSIAN EMPIRE

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Abstract: The subject of this article is the philosophical views of representatives of the legal tradition of the late period of the Russian Empire regarding the status of the Grand Duchy of Finland. The objective of this work is to conduct a philosophical and legal assessment of the views of various Russian legal theorists.

This study uses philosophical cognition methods comprising, firstly, a formal dogmatic method for analysing legal instruments related to the legal status of the Grand Duchy of Finland, and secondly, a hermeneutic method in relation to the studied works of Russian legal theorists. A concrete historical method is also used.

The main result of this article is to identify contradictions in the philosophical views of Russian legal theorists on the legal status of the Grand Duchy of Finland and determine all the contributing factors.

The main conclusion drawn in this article is that the philosophical and theoretical views of representatives of the Russian legal tradition were significantly influenced by their initial objectives. Researchers first sought to refute the existence of a union between the Russian Empire and the Grand Duchy of Finland, which sidelined and hindered the cognition of the legal nature of relations between Russia and Finland.

Keywords: Russian Empire, accession of Finland, legal status of the Grand Duchy of Finland, Treaty of Fredrikshamn, state structure, union, types of connections of states.

Introduction

A heated discussion unfolded in pre-revolutionary Russian literature (before 1917) on the legal status of the Grand Duchy of Finland, with

the main point of contention being the question of whether Finland possessed statehood or was an incorporated province of the Russian Empire. The interest of Russian philosophers and jurists in the Finnish question is noteworthy because, as

A. A. Zhilin (1912, p. 4) and A. S. Yashchenko (1912, p. 777) note, during this period, general theoretical problems of the state-territorial structure and unions of states (federations, confederations, unions) were of very little interest to Russian jurists. In solving the Finnish question, the Russian legal tradition faced an atypical problem in the context of the state structure. It would seem that the appearance of a new discussion topic in Russian jurisprudence not only led to the expansion of the subject field of research by Russian philosophers and jurists, but also “exposed” the problems of scientific cognition existing in Russian jurisprudence. These obstacles can conditionally be divided into those relating to the novelty of this topic for the Russian legal community and those relating to the political, philosophical and ideological principles of the parties to the unfolding controversy. In this regard, philosophical and legal assessment of this discussion acquires a special significance for the legal community as an example of the cognition of a fundamentally new subject complicated by an ideological factor.

The special status of the Grand Duchy of Finland was considered by the Finnish elites and by individual representatives of the Russian legal community as a manifestation of Finnish statehood. This view contrasted even more with the unitary picture of the state structure. As a result, a large-scale controversy on this issue unfolded in the Russian Empire the importance for the socio-political development of the Russian Empire of which became apparent at the tabling of Draft Article 2 of the Fundamental Laws of the Russian Empire of 1906 (hereinafter – Code of 1906) in disputes between supporters and opponents of the existence of Finnish statehood, which B. E. Nolde describes exhaustively. It is noteworthy that the adopted version of Article 2 of the Code of 1906 fails to definitively resolve the issue of the presence or absence of Finnish statehood. According to B. E. Nolde (1911), “all definitive content was intentionally and deliberately thrown out of the text of the article” (pp. 468-475) for political reasons.

The Finnish question was extremely painful for both sides, which manifested itself in mutual irritation and discontent. A. A. Zhilin (1912) characterised the point of view about the existence of a union between the Russian Empire and the Grand Duchy of Finland as “a reflection of

separatist tendencies in science” (p. 293). Of note, it is the intemperance of the sides that calls their objectivity into question. As a result, this work necessitated a legal assessment of positions regarding the status of Finland.

As such, the Finnish question actualised the topic of state structure for the Russian legal community. The idea of the existence of statehood in Finland prompted Russian jurists to begin looking at the problem of the associations of states. Along with the autonomist model, the discourse of Russian philosophical and legal thought touched upon the categories of federation, confederation, personal, and real union. The Finnish question could be considered the forerunner of scientific interest in this topic that brought to public light the already-existing views of Russian jurists and legal philosophers regarding the state-territorial structure and laid the conceptual foundation for further discourse.

Points of View of the Treaty of Fredrikshamn

The point of view of the Treaty of Fredrikshamn received the widest acclaim in Russian literature (Berendts, 1908, pp. 116-117, Danevsky, 1892, p. 147; Martens, 1882, p. 244; Tagantsev, 1910a, pp. 36-37). As noted by B. E. Nolde (1911), this view “has been repeatedly reproduced by government representatives and members of Russian legislative institutions” (pp. 495-496). Proponents of this position believed that the territory of Finland was attached to the Russian Empire by virtue of the Peace Treaty of Fredrikshamn dated 5 September 1809 between the Russian Empire and the Kingdom of Sweden (1830, hereinafter – the Treaty of Fredrikshamn). The literal meaning of Article IV of this treaty, which explicitly states that the Finnish provinces “is now the property and Sovereign possession of the Russian Empire and will forever be a part of the same”, testifies in favour of the Treaty of Fredrikshamn (p. 1189).

However, this is not an ideal approach. Its proponents do not give a full legal assessment of Alexander I’s manifestos that were published before the Treaty of Fredrikshamn itself was concluded. As a result, the provisions of the 20 March 1808 Manifesto – “Regarding the Conquest of Swedish Finland and its Permanent Ac-

cession to Russia” (hereinafter – the 20 March 1808 Manifesto) (1830, p. 146), which is legally valid under the legislation of the Russian Empire, are not recognised as having any legal significance. As such, insofar as this question is concerned, F. F. Martens (1882, p. 244) and V. P. Danevsky (1892, p. 147) never make any reference to the Russian Emperor’s manifestos. F. P. Elenev (1891) considers the Treaty of Fredrikshamn as the basis for Finland’s accession to Russia and recognises the legal significance of the events preceding this accession, but fails to correlate the provisions of the Treaty and the 20 March 1808 Manifesto (pp. 9-15, 66-74).

Moreover, recognition of this approach may lead one to ultimately view Alexander I’s manifestos as illegal. As such, N. S. Tagantsev (1910a) did not recognise Alexander I’s manifestos and the forced actions of the Finnish population as “acts of legal reunification of Finland with Russia” (pp. 36-37). According to E.N. Berendts (1908, p. 115, 1910, pp. 9-10), only the King of Sweden could convene the Diet before the signing of the Treaty of Fredrikshamn, and the Russian Emperor’s actions therefore violated international law. The Finnish population of Finland was released from the oath of allegiance only after the conclusion of the peace treaty, and therefore any communication between the Finnish people and Alexander I was illegal.

Criticism of the Viewpoint of the Diet of Porvoo

This position reflects the Finnish view on the issue of the legal status of the Grand Duchy of Finland and lies in the fact that the Diet of Porvoo held in Borgå in March 1809 produced a union between Finland and Russia. From the Finnish side’s point of view, the “solemn act” of the Diet of Porvoo was fundamental for “the state of Finland, and, consequently, for the nature of its accession to Russia” (Danielson, 1890, p. 1).

On the eve of the Diet, Russian Emperor Alexander I signed the 15 March 1809 Manifesto by which he “confirmed the religion and fundamental laws of the country, as well as the privileges and rights” of the Finnish estates. During the Diet, the estates “swore an oath of allegiance ... [to him – *authors’ note*] and approved

the inviolability of the constitution”. Alexander I “accepted the oath of representatives” of Finland, which “testified that an act of union had been committed”. The preservation of the basic laws of Finland led to “state independence” by virtue of which the Grand Duchy of Finland possessed “a separate territory inhabited by a special people” and “Finnish authorities” who administered Finland and enjoyed the right “to act as a Finnish nation in all internal affairs” (Mehelin, 1890, pp. 34-35, 55).

Russian jurists offered several arguments against this point of view that essentially alluded to the recognition of the connection between the Russian Empire and the Grand Duchy of Finland as a real union. Firstly, the Russian Emperor’s actions in relation to Finland were of a unilateral imperious nature, and as such, the convocation and holding of the Diet or the granting of privileges by Alexander I could not be viewed as contractual in nature. As noted by B. E. Nolde (1911), the rule of law in Finland was established by an imperious “unilateral act of the Russian monarch” (pp. 507-508). N. M. Korkunov (1909, pp. 199-200) characterises the actions to convene the Diet as an imperious act of the Russian Emperor. Alexander I’s promises to preserve rights and privileges also constituted “unilateral acts” and could not be viewed as contractual in nature (Berendts, 1910, p. 10; Korkunov, 1909, pp. 199-200). This position is indirectly confirmed in Article VI of the Treaty of Fredrikshamn, in which the actions of the Russian Emperor in administering the territory of Finland are recognised as “the most undoubted experiments of mercy and justice” undertaken “for the sole motives of his own magnanimous permission” (1830, pp. 1189-1190).

Referring directly to the texts of the acts of the Russian Emperor allows confirming their imperious unilateral nature. In the 5 June 1808 Manifesto, Alexander I demanded submission and loyalty from the Finlanders (Shilovsky, 1903, p. 134). By the Act of 20 January 1809, the Russian Emperor ordered the representatives of the Finnish estates to appear in Porvoo for the Diet (Shilovsky, 1903, pp. 135-136). It directly follows from the 15 March 1809 Manifesto that the Russian Emperor himself “approved and certified” the rights and privileges of the population, fundamental laws, and religion without involving anyone else (Shilovsky, 1903, p. 10). Similarly,

as laid out in the text of the 23 March 1809 Manifesto, this act was only “made in the presence” of the Finnish estates (Shilovsky, 1903, p. 136), which means they did not take an authoritative part in its publication. The listed acts of the Russian Emperor were issued by him independently, were of an imperious nature, and did not contain conditions for their entry into force depending on the consent, oath, or other actions of the Finnish population.

Secondly, a hypothetical agreement between the Russian Empire and Finland was impossible, since at the time of the Diet of Porvoo, Finland as a subject authorised to conclude it did not exist. As noted by N. M. Korkunov (1909), “[Finland – *authors’ note*] got out from under the Swedish Empire and came directly under Russian rule”. Since “Finland did not secede from Sweden, did not declare its independence, did not organise itself as a separate state,” it did not represent an independent entity. Moreover, Finland, comprising several Swedish provinces, “did not even constitute one administrative whole” (p. 198).

In accordance with the Act of 20 January 1809, the Diet of Porvoo, as a meeting of representatives from the Finnish estates, was convened at the order of Alexander I as the ruler of the territory of Finland, since “by divine providence and the providential success of [Russian – *authors’ note*] troops..., the Grand Duchy of Finland was forever united with the ... [Russian – *authors’ note*] Empire” (Shilovsky, 1903, p. 135). In this regard, N. M. Korkunov’s (1909) reasoning on this issue seems fair: either Finland was already part of the Russian Empire at the time of convocation of the Diet by the Russian Emperor and then the Diet was legally convened, or Finland was not under the autocratic authority of the Russian Emperor and then the convocation of the Diet, its holding, and all its decisions were legally null and void. In the second case, only the Swedish government could negotiate with the Russian Empire for the Finnish population as “Swedish subjects...” and the Diet would not be authorised to conclude a union (pp. 198-200). Adhering to the “Treaty of Fredrikshamn” point of view, E. N. Berendts (1910, pp. 8-9) and N. S. Tagantsev (1910b, p. 4) consider the convocation of the Diet as illegal and believe that the population of Finland represented by the Diet of Porvoo was not in a position to negotiate anything with

the Russian Empire.

Thirdly, the hypothetical agreement of the Diet of Porvoo with the Russian Emperor on the issue of Finland’s accession to the Russian Empire would be devoid of any subject. E. N. Berendts (1910, p. 9) and N. M. Korkunov (1909, p. 200) note that Alexander I and the Diet had nothing to agree on this issue, since once the Diet was recognised as legitimate, the territory of Finland should have been recognised as already part of the Russian Empire.

Support for the Idea of a Real Union Between the Russian Empire and the Grand Duchy of Finland

There were a few supporters of the existence of a real union between the Russian Empire and the Grand Duchy of Finland, chief among them being highly authoritative Russian philosophers and jurists such as B. N. Chicherin, A. D. Gradovsky, V. I. Sergeevich, and A. V. Romanovich-Slavatinsky. It is worth mentioning that these authors considered the legal status of Finland before the adoption of Code of 1906 back when the Fundamental Laws of the Russian Empire of 1857 (The Digest of Laws of the Russian Empire compiled by the Order of the Sovereign Emperor Nicholas I, 1857, Vol. I, Part 1) (hereinafter referred to as the Code of 1857) was legally binding. Article 4 of Code of 1857 considers the Thrones of the Kingdom of Poland and the Grand Duchy of Finland as inseparable from the Russian Throne, was still in force (p. 2).

B. N. Chicherin (1894) notes that unlike the Kingdom of Poland that lost its special political status, Finland retained its “political independence” and a “special structure” that was typical of a separate state. At that, according to Article 4 of the Code of 1857, the Grand Duchy of Finland was inseparably connected with the Russian Empire, and relations between Russia and Finland should therefore be regarded as a real union (p. 183). Similarly, A. D. Gradovsky (1907) considers the Grand Duchy of Finland as “a state completely isolated in internal administration, although inseparably linked with the Russian Imperial Crown” (p. 119).

V. I. Sergeevich (1883) writes that the conquered territories of Poland and Finland “became part of the [Russian – *authors’ note*] Empire ... on

the rights of separate states". He later expresses his opinion slightly differently by positing that the Grand Duchy of Finland "was attached ... as a province..., not as a separate state". Moreover, Finland later "became a separate state by the will of Emperor Alexander I", who preserved the "ancient free institutions" of Finland (Sergeevich, 1883, pp. 628-629), thus essentially creating the separate Finnish Throne that is referred to in Article 4 of the Code of 1857. V. I. Sergeevich's position was supported by A.V. Romanovich-Slavatinsky (1886, pp. 98-99).

It is noteworthy that unlike their Finnish counterparts, Russian jurists who supported the idea of the existence of a real union between Russia and Finland did not consider the events of the Diet of Porvoo as a unification act. As such, A. D. Gradovsky (1908, p. 191) recognises that "the Grand Duchy of Finland was attached to Russia by the Peace Treaty of Fredrikshamn of 1809". V. I. Sergeevich (1883, pp. 628-629) and A. V. Romanovich-Slavatinsky (1886, pp. 98-99) believed that the Finnish statehood arose at the will of Alexander I after the establishment of a special structure of the Grand Duchy of Finland that influenced the nature of the supreme power in Finland. While that may be so, this view fails to take into account that a real union is based on a bilateral agreement, which is why Alexander I could not create this union by his will alone.

At the same time, in interpreting Article 4 of the Code of 1857, all the above jurists admit a violation of legal logic, which M. N. Korkunov (1909) rightly highlights. With the described interpretation, it would be necessary to recognise the existence of a real union both between Russia and Poland and between Russia and Finland (pp. 196-197). B. N. Chicherin (1894, p. 183), A. D. Gradovsky (1907, p. 119), V. I. Sergeevich (1883, pp. 629-630), and A.V. Romanovich-Slavatinsky (1886, p. 99) point out here that in the wake of the uprisings, the Kingdom of Poland lost its special political status and was incorporated into the Russian Empire. The disposition of Article 4 of the Code of 1857 is the same for Finland and Poland. In this regard, this norm cannot generate different legal consequences for them. In other words, it cannot confirm the existence of a union of the Russian Empire with the Grand Duchy of Finland without recognising the existence of a union with the Kingdom of Po-

land. Also, M. N. Korkunov (1909, p. 197) points out that Article 4 of the Code of 1857 "does not speak about the connection, but ... about the indivisibility" of the thrones, and therefore the Russian, Polish, and Finnish Thrones represent a single throne and cannot be united.

A.V. Romanovich-Slavatinsky (1886, p. 99) objects to the general interpretation of Article 4 of the Code of 1857 for the Polish and Finnish Thrones on the grounds that the phrases "Kingdom of Poland" and "Throne of the Kingdom of Poland" are anachronisms in the legislation, and that once incorporated, the Kingdom of Poland ceased to exist. V. I. Sergeevich (1883, p. 630) and A.V. Romanovich-Slavatinsky (1886, p. 99) note that the goal of the transformations that were implemented in the Kingdom of Poland under Decree dated 28 March 1867 (1871, p. 333) was its complete merger with other parts of the Russian Empire. Against this background, the "merger" of the Kingdom of Poland with other parts of the Russian Empire through administrative reforms under the decree consisted in changing the system of government of the Kingdom of Poland but did not mean its formal termination as a legal category. The Kingdom of Poland continued to exist, albeit not as a separate administrative unit, but similar to the "other parts" of the unitary Russian Empire. In this regard, in interpreting Article 4 of the Code of 1857, there is need to extend its position to cover both the Throne of the Kingdom of Poland and the Throne of the Grand Duchy of Finland.

Concept of "State" and the Grand Duchy of Finland

As shown earlier, Russian jurists who supported the idea of the existence of a real union between the Russian Empire and the Grand Duchy of Finland believed that the statehood of Finland had arisen after its accession to the Russian Empire. In connection with the specifics of the governance framework of the Grand Duchy of Finland, V. I. Sergeevich (1883, pp. 628-629) and A. V. Romanovich-Slavatinsky (1886, pp. 98-99) pointed to the special nature of the supreme power. The Finnish side noted the existence of the "state independence" of the Grand Duchy of Finland that was manifested in the existence of a "separate territory inhabited by a special people"

and the administration of the “Finnish authorities” (Mehelin, 1890, pp. 34-35, 55).

A. S. Alekseev (1905) objects to the recognition of the statehood of the Grand Duchy of Finland on the basis of the presence in it of “special institutions”, since “the political autonomy of Finland does not raise it to the level of an independent state, and the special institutions used by the British colonies do not destroy the unity of the British Empire” (p. 167). S. K. Mikhailov (M. M. Borodkin) (1901, pp. 42-46, 51-56) also denied the possibility of applying the concept of “state” to the Grand Duchy of Finland, since contrary to the above position of the Finnish side, the Grand Duchy of Finland did not have its own territory, power, or population. The Russian Emperors independently changed the borders of the Grand Duchy of Finland, meaning the territory could not be recognised as “its own” for the Grand Duchy of Finland. By virtue of Article 4 of the Code of 1857, the Finnish Throne was undivided and united with the Russian Throne, and therefore, attempts to divide the supremacy of this undivided and united throne were artificial. Quite tellingly, the name of the supreme executive authority of Finland contained word “Imperial”, which emphasised its belonging to the imperial power. The Grand Duchy of Finland, therefore, could not recognise the existence of its own state power.

Finally, S. K. Mikhailov (M. M. Borodkin) (1901) consider the occasional use of the category “Finnish citizen” in the statutory and regulatory framework as a mistake that came about due to the “absence of ... proper unity and consistency of terminology” in the statutory and regulatory enactments of the Russian Empire (p. 48). The Code of Laws on States (The Digest of Laws of the Russian Empire compiled by the Order of the Sovereign Emperor Nicholas I, 1857, Vol. IX) and the Finnish legislation did not establish the institution of separate Finnish citizenship. Otherwise, when relocating to the Grand Duchy of Finland, Russian subjects would need to transfer to Finnish citizenship and swear an oath, which, in reality, did not happen. In addition, when Finland joined, the oath was sworn by the local population specifically for Russian citizenship, which the provisions of the 20 March 1808 Manifesto and the 5 June 1808 Manifesto confirm (Mikhailov (Borodkin), 1901, pp. 48-49).

The reasoning of S. K. Mikhailov (M. M. Borodkin) (1901) on the absence of the need to swear the oath of Finnish citizenship during the relocation of Russian subjects also leads one to conclude that such subjects should have already sworn their oath of allegiance to the Russian Emperor. In accordance with Article 33 of the Code of 1857, allegiance to citizenship was affirmed by a nationwide oath upon the accession of the new Russian Emperor (p. 6). There was no need to swear the oath of allegiance to the Russian Emperor again.

“Reconciliation” of the 20 March 1808 Manifesto and the Treaty of Fredrikshamn

As noted earlier, the provisions of the 20 March 1808 Manifesto and Article IV of the Treaty of Fredrikshamn define the moment of Finland’s accession to the Russian Empire in various ways. In this regard, the “Treaty of Fredrikshamn” point of view cannot be unequivocally supported. That being the case, the ratio of these normative sources was essential for determining the legal status of the Grand Duchy of Finland, since the Russian Emperor, in the words of Article VI of the Treaty of Fredrikshamn, “had already exercised his power over the residents” of the territory of Finland by the time it was concluded (1830, pp. 1189-1190). As such, the foundations of the legal status of the Grand Duchy of Finland were laid even before the Treaty of Fredrikshamn was concluded. That said, as pointed out earlier, there are Russian jurists who consider Alexander I’s actions during the period in question as illegal. In this case, a part of the main regulatory framework relating to the studied question should be recognised as having no legal force, which would make the legal situation of Finland even more uncertain.

B. E. Nolde (1911) attempted to solve this problem. Nolde believed the actions and acts of 1808-1809 to be a single “logically consistent” chain of historical events that represented the general process of Finland’s accession. He distinguishes “two different legal planes: international and state”, dividing Finland’s accession “from the point of view of public law” and “from the point of view of international law” (pp. 504-506).

According to B. E. Nolde (1911), the accession of Finland took place on the basis of the 20 March 1808 Manifesto and the 5 June 1808 Manifesto (pp. 506-507). We view this position as lacking in clarification, since Finland's accession to the Russian Empire could not have happened twice, as it is impossible to attach a territory that has already become part of the state. In the 5 June 1808 Manifesto, Alexander I already refers to his "loyal citizens of newly united Finland", stating the accomplished fact of accession (Shilovsky, 1903, p. 133).

B. E. Nolde (1911) believes that the international legal accession of Finland to the Russian Empire took place at the conclusion of the peace treaty. The meaning of the Treaty of Fredrikshamn "is limited to the field of Russian-Swedish international relations" and consists in the fact that "Sweden has no right to deny the property and sovereign possession of Russia over Finland" (pp. 504-505). A similar thought is expressed by A. S. Alekseev (1905), who believed that Finland had been attached by the 20 March 1808 Manifesto as a result of the conquest and the "Treaty of Fredrikshamn ... [only – *authors' note*] authorised [this – *authors' note*] accession" (p. 166).

According to B. E. Nolde, the 15 March 1809 Manifesto and the Diet of Porvoo only continued the policy already pursued by Alexander I towards Finland. The Russian Emperor continued to act on the territory of Finland as a sovereign, carrying out measures for the organisation of state administration, including convening the Diet and confirming the rights and privileges of the Finnish population (Nolde, 1911, pp. 506-507). Characteristic in this regard is the continuity of Alexander I's acts. In the 20 March 1808 Manifesto (1830, p. 146), the Russian Emperor orders the population of Finland to swear the oath. In the 5 June 1808 Manifesto, Alexander I demands from his subjects "commitment, unity, and unwavering loyalty", in return promising protection, care for the needs of the Finlanders, and loyalty for them (Shilovsky, 1903, pp. 133-134). Based on the text of the Act of 20 January 1809, it follows that the Diet is convened in view of the Russian Emperor's concern for the welfare of the population of Finland (Shilovsky, 1903, p. 135). Finally, the previously promised imperial favour was shown in the 15 March 1809 Manifesto, which confirmed the rights and privileges

of the Finnish estates (Shilovsky, 1903, p. 10).

According to B. E. Nolde (1911), this approach, "does not violate the historical truth" and "does not erase a single act from the history of Finland's accession" (p. 506). That said, the recognition of Finland's accession on the basis of the 20 March 1808 Manifesto means that after its publication, the actions of the Swedish army in Finland and the partisan movement of the Finnish population became illegal. E. N. Berendts and N. S. Tagantsev note that the Finnish servicemen and partisans who continued to fight on the side of Sweden after the publication of the 20 March 1808 Manifesto just remained faithful to their oath and their monarch and therefore cannot be considered traitors who fought against their state (Berendts, 1910, p. 10; Tagantsev, 1910a, p. 36).

It is our opinion that the specified problem is solved due to the differentiation of the international and state legal planes proposed by B. E. Nolde. The Russian Emperor's acts extended to the subjects of the Russian Empire and did not change the legal status of the territory of Finland for the subjects of the Swedish King. For example, the 20 March 1808 Manifesto (1830, p. 146.) is addressed directly to the subjects of the Russian Empire who were not part of the Finnish population at the time of its publication. The Russian Emperor therefore commands them to swear the oath of allegiance for them to become his subjects. At the same time, the Russian Emperor's specified act was obligatory for the subjects of the Russian Empire for whom the territory of Finland became Russian after its publication.

The publication of the 20 March 1808 Manifesto resulted in competition between Russian and Swedish sovereignty on the territory of Finland. From the time of its publication until the conclusion of the Treaty of Fredrikshamn, from the point of view of Russian law, the territory of Finland belonged to the Russian Empire, while from the point of view of Swedish law, it was the possession of the Kingdom of Sweden. Each of the parties to the armed conflict sought to get rid of the influence of the other party's sovereignty on the disputed territory. Control over the territory of Finland was therefore transitional in nature. Due to the doubts of the Finnish population about the finality of the "transition from Swedish rule to Russian one", hesitation in the issue of swearing the oath of allegiance to the Russian

Emperor before the peace treaty was concluded seems natural (Korkunov, 1909, p. 198).

In accordance with Article IV of the Treaty of Fredrikshamn, the Swedish King “irrevocably and forever renounced ... all his rights and claims to the provinces ... conquered by arms ... from the Kingdom of Sweden” (1830, p. 1189). At the time of conclusion of the peace treaty, the territory of Finland was already under the control the troops of the Russian Empire, and therefore Article IV of the Treaty of Fredrikshamn does not refer to the transfer but directly to the recognition of this territory as a Russian possession by the Swedish side. This recognition ended the competition of the sovereignties.

It is important to note that Article IV of the Treaty of Fredrikshamn does not cover the period from 20 March 1808 to 5 September 1809, since, otherwise, it would mean recognition by the Swedish side of the illegality of its actions to retain the disputed territory. At the same time, the non-recognition by the Swedish side of Finland’s accession to the Russian Empire from 20 March 1808 does not entail the invalidity of the Russian Emperor’s legally issued acts. “The internal ... binding nature” of Russian acts cannot be made dependent on the provisions of the Treaty of Fredrikshamn (Nolde, 1911, p. 505).

Non-Legal Factors and Political and Philosophical Problems of the Cognition of the Nature of Relations between the Russian Empire and the Grand Duchy of Finland

The nature of relations between the Russian Empire and the Grand Duchy of Finland turned out to be extremely controversial. This can be partly explained by the fact that the issues of state-territorial structure and connections of states were relatively new to Russian jurisprudence. Therefore, there were conceptual disagreements among Russian jurists about the contractual nature of a real union and about the possibility of statehood of a territory due to its special structure.

At the same time, the main factor complicating the process of cognition in this matter is the influence of political, philosophical, and ideological beliefs. According to B. E. Nolde (1911), disputes over the nature of relations between the

Russian Empire and the Grand Duchy of Finland were caused primarily by political, not legal, reasons (p. 504). The parties to the controversy took diametrically opposite positions and refused to compromise. The Finnish side proceeded from the existence of the Grand Duchy of Finland’s statehood, in connection with which it considered interference in the internal affairs of Finland as unlawful. The Russian side denied the statehood of the Grand Duchy of Finland and considered it possible to deal with relevant issues (Bakhturina, 2017).

As a result of the politicisation of the discussion, in considering this issue, most Russian jurists aimed to refute the thesis of the existence of a union between the Russian Empire and the Grand Duchy of Finland, and not to determine the nature of their relations. It can be said that the legal reasoning was instrumental rather than cognitive in nature. In this regard, a number of authors limited themselves to Article IV of the Treaty of Fredrikshamn and considered it sufficient to refute the point of view of the Diet of Porvoo without evaluating other fundamental documents on this issue.

Other authors give arguments in favour of recognising both the 20 March 1808 Manifesto and the Treaty of Fredrikshamn as the basis for Finland’s accession to the Russian Empire. A good example is the work by N. M. Korkunov (1909). He considers the manifestos of Alexander I and his convocation of the Diet as “acts of internal governance” in the context of the denial of their contractual nature. At the same time, relying on Article IV of the Treaty of Fredrikshamn, he argues that the territory of Finland “got out of the control of the Swedish Empire ... and came directly under the rule of Russia” (pp. 198-199). A similar problem is characteristic, in particular, of the works by A. A. Zhilin (1912, p. 295) and M. Ya. Pergament (1893, pp. 99-100).

Conclusion

Pre-revolutionary Russian jurists did not develop a unanimous and consistent view on the legal status of the Grand Duchy of Finland. Particular difficulties came about when trying to determine the moment of Finland’s accession and, consequently, the legality of the acts of the Russian Emperor Alexander I that were fundamental to

the legal status of Finland. We view both the “Treaty of Fredrikshamn” and the “Diet of Porvoo” points of view as problematic. The most balanced and correct position seems to us to be that of B. E. Nolde, which, to use his words, did not “erase a single act from the history of Finland’s accession”.

The Finnish question was extremely painful for the parties to the political discussion, who were unable to find a compromise. It sparked interest in the Russian legal doctrine in the problems of the state-territorial structure and connections of states. At the same time, the studies of Russian jurists were primarily aimed not at objectively establishing the legal nature of relations between the Russian Empire and the Grand Duchy of Finland, but at refuting the political position of the Finnish side. In this regard, the main factor complicating the cognition of this issue is the influence of political, philosophical, and ideological beliefs on Russian jurists.

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