

ISSUES OF IMPROVING THE MECHANISM OF PROTECTING HUMAN RIGHTS

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Abstract: This article covers issues of improvement of the mechanism for protecting human rights in Ukraine in the historical and legal context. It is emphasized that national historical and legal experience should be taken into account when improving in the current legislation of Ukraine. In the article, a number of recommendations for completing the formation of the current legislation of Ukraine in terms of promotion of human rights in Ukraine is proposed.

Keywords: human rights, protection of human rights, historical and legal experience, mechanism of guarantees of human rights, promotion of human rights in Ukraine

Entrenchment of human rights in the Constitution of Ukraine (in particular, natural, political, social, economic, cultural, family, environmental, information and other rights and freedoms of the person and citizen in Ukraine are entrenched in Part II of the Fundamental Law of Ukraine [1, p. 536]), constitutional acts, codified laws, their guaranteeing, realization and protection constitute the mechanism of institutionalization of rights, at the same time, it is an integral part of the legal system of any democratic and rule-of-law state and in Ukraine, in particular. The creation of an effective mechanism is the key to minimizing threats to national security of

Ukraine that is particularly important in the context of challenges facing the country today.

The tragic events of late 2013 to early 2014 in Ukraine related to mass and gross violations of human rights by then authorities, encroachment on life and health, other rights of Ukrainian citizens led to the Revolution of Dignity; temporary occupation of the Autonomous Republic of Crimea by Russian troops, an undisguised aggression of Russia against Ukraine, the anti-terrorist operation and operations of joint forces, overcoming of corruption, ensuring of the proper functioning of state and government bodies, the extreme necessity of improving the social and economic situation envisage for not detachment, but, on the contrary, great attention of the state to the process of maintaining steadfastness of human rights in Ukraine. In turn, this affects the quality of fulfillment by the government of strategic and tactical goals in the sphere of national security of Ukraine [2, p. 47].

Let's recap the historical experience of the Ukrainian people in the sphere of institutionalization of human rights that illustrates not only the development of human rights in Ukraine, but also indicates the need for their protection by the state, because the present time is closely connected with the history and, in the context of this subjects, with historical process of provision of human rights in constitutional instruments of Ukraine. For example, the confirmation of this is the Constitution of Pylyp Orlyk (1710) that was adopted under conditions of the armed aggression of Moscow State of Peter the Great against Ukraine. The authors of this document understood that preservation of Ukraine as a state is possible not only by means of the strengthening of the armed forces, conclusion of agreements with other countries, etc., but also by ensuring rights of the Ukrainian people, especially those sections of the population that needed help.

That's why, in the Constitution of 1710, there is a strong emphasis on the "rights and liberties" of people ("free Little Russian people"), it is also said that "in accordance with the old customs and ancient laws, elected in a free vote as their hetman His Grace Pylyp Orlyk" (Preamble) "both military and civil officers, especially colonels, must be elected by a free vote and, after the election, be confirmed by the Hetman's

authority” (part 2, section X) (the principle of election), “His Highness the Hetman shall not himself punish a defendant with his personal revenge and power, but shall refer such a criminal or civil case to the general court” "(Section VII) (the principle of trial) [3].

In the Constitution, a significant place is dedicated to protection of “rights and liberties” of the person regardless of his/her social status; however, it also deals with a special protection of rights of vulnerable social groups. Thus, in Section X, it is said that “in order not to impose excessive burdens, taxes, seizures, and violent extortions on military and common people”, “colonels, sotniks, otamans and all the military and common people officers should not burden Cossacks and common people, especially those who are not under their government or are not owned by them, with villein service and labor-rents at their private households: not to force them to mow hay, harvest crops at the fields and make dams, not to take away the land and not to force to selling the land, not to take movable and immovable property for any guilt, not to force artisans to the performing of their household chores free of charge and not to involve Cossacks to making their private deliveries”.

It is especially emphasized that collectors of taxes and duties are not allowed to cause “wild extortions” against “poor people”; require of “ordinary people” to maintain officials on their business trips and provide them with transport; charge taxes from the widows and orphans of Cossacks and women, whose husbands were in military campaigns, and involve them in public works (Section XI, XIV, XVI) [3].

Let us pay attention to another document — the Constitution of the Ukrainian People's Republic dated 29 April 1918 that was also adopted under dramatic conditions: socio-economic difficulties, an armed aggression of the Bolshevik Russia against the UPR, the disbelief a significant part of Ukrainian population in the government, etc. However, the authors of the Constitution of 1918 entrenched the basic human rights, inviolability of such rights (mostly civil, political, social and economic rights) in Articles 7 to 21 of Section II “Rights of Citizens of Ukraine” [4].

Other constitutional instruments used to entrench human rights were the Laws on the Temporary State System of Ukraine dated 29 April 1918 adopted under the change of

power in Ukraine, continued war with Russia, and economic ruin. However, Laws in Section III “Rights and Duties of Ukrainian Cossacks and Citizens” contained a number of rights such as: the right of inviolability of residential property, the right to property, the right to be presumed innocent, the right to work, the right to freedom of residence, some political rights, etc. (Articles 14 to 22) [5].

There is no escaping the fact that there is another document of constitutional and legal nature (although developed in the declarative form) — the Declaration of Ukrainian Directory adopted by the Directory on 26 December 1918. Taken under the next change of power in Ukraine, it reflected the “socialist” priorities of the Directorate’s leaders, that’s why it only secured rights of “working people” [6, p. 348]. In particular, the Directory declared the 8-hour working day, the right to collective agreements, strikes, the right to create factory committees, the right to use land by landless and land-poor peasants, etc. Special emphasis was put on the thesis that “power in the Ukrainian People's Republic should only belong to the working classes — workers and peasants, those classes that gained this power by their blood” [7].

The turbulent events of the early eighteenth century, 1917–1918 are associated with permanent change of power in Ukraine; the staying in Ukraine of forces of foreign states, social and economic decline were not able to contribute to the implementation of human rights that were formally secured in the above-mentioned documents. That is why they remained “historical documents of declarative nature”. Moreover, at that time, there was no clearly defined concept of “mechanism of protecting rights by the state”. That is why we are not able to find the reflection of such mechanism in the mentioned constitutional and legal instruments. On the other hand, probably, the lack of it became one of the reasons for the loss of value of the “national security” notion and, ultimately, the drop of national Ukrainian states.

In the Soviet period, human rights were entrenched by a number of all-union and national (Ukrainian) constitutions. However, authoritarianism and totalitarianism of the state regime did not allow to ensure realization of these rights by citizens. As an example, we can mention the "Stalin" Constitution of 1936 that was considered at

that time one of the most democratic in terms of proclaimed human rights. But, in real life, these rights were grossly violated by the Communist authorities.

Mention may be made of the Constitution of the Ukrainian SSR dated 20 April 1978, in which “human rights” were not reflected, they were and replaced by “fundamental rights, freedoms and duties of citizens”. Moreover, these rights were specified in Section 6, after sections about the political system, economic system, social development, culture, foreign policy, etc. [8] that indicates a disregard of interests of people and citizens by the Soviet power.

Let’s recap the reality of the present time. Formation and development of the legal system of Ukraine, Ukrainian national legislation, in the first place, constitutional legislation, gradual withdrawal from of Soviet legal heritage necessitated the entrenchment of human rights in Ukraine on constitutional and legal level.

This is the reason why it was entrenched in Article 3 of the Constitution of Ukraine of 1996 that “The person's life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value” [9]. Accordingly, Section II of the Fundamental Law of Ukraine secured a wide range of natural, political, social, economic, cultural, family, environmental, information and other rights and freedoms of the person and citizen in Ukraine. Paragraphs 2 and 3 of Article 22 of the Constitution of Ukraine envisage that constitutional rights and freedoms are guaranteed and cannot be annulled, and it is not allowed to narrow the content and scope of the existing rights and freedoms when adopting new laws or amending the existing laws. This means that in any situation of internal or external nature, human and civil rights of the person and citizen are inviolable and are of primary importance under conditions of ensuring national security of Ukraine.

However, the rapid processes of European integration of Eastern Europe at the beginning of the XXI century, application to them of the European Union standards in the area of vesting, guaranteeing, exercising human rights and freedoms [10, 11, 12, 13, and 14], launching Ukraine's accession to the European Union by the initiative of President of Ukraine V. A. Yushchenko (2005–2009) led to reinterpretation of the role of human rights and freedoms in the life of the ordinary

citizen of Ukraine. The course to European integration, rapprochement between Ukraine and Europe continued in subsequent years. Thus, within the period from 2009 to 2013, 21 rounds of negotiations between Ukraine and the EU were held within the framework of document “Association Agenda to Prepare and Facilitate the Implementation of the Association Agreement”, in 2013, the fulfillment by Ukraine of the Eastern Partnership road maps for 2012 was confirmed. Finally, on 27 June 2014, President P. O. Poroshenko signed the Association Agreement between Ukraine and the EU (its economic part; while the political part was signed on 21 March 2014). Presidential and parliamentary elections in Ukraine in 2019, the victory of democratic forces confirmed Ukraine's aspirations to join the EU, and, respectively, to adapt the national legislations to European standards applicable in the sphere of human rights. An example of this is the statement of President of Ukraine V. O. Zelensky made on 18 June 2019 that “Ukraine is already a part of the European family. Ukraine strives for European integration as the main aspiration of our people. But we understand that we need to provide convincing results to be able to join the common economic, legal, customs and digital space of the EU” [15].

The authors’ vision of the need to respect human rights as an integral and essential part of the public policy, its protection as one of the important functions of the state in the sphere of national security is confirmed by the text of Decree of the President of Ukraine “On the Decision of the Council of National Security and Defense of Ukraine dated 6 May 2015 “On Strategy of the National Security Ukraine”. Thus, in paragraph 4 of Section 1 “General Provisions”, it is said that “the policy of national security of Ukraine is based on respect of standards and principles of the international law. Ukraine will protect its fundamental values defined by Constitution and laws of Ukraine – independence, territorial integrity and sovereignty, dignity, democracy, the human being, human rights and freedoms, rule of law, welfare, peace and safety”, while part 2 of paragraph 1 of Section 2 “Objectives of the Strategy of National Security of Ukraine” envisages, among other things, for strengthening rights and freedoms of the person and citizen [16].

Moreover, the Ukrainian state is directed to this by the Ukraine-European Union Association Agreement, where in the preamble, paragraph e) of Article 1, Article 2 of Section I, Article 14 of Section III and other articles, it is said that cooperation should be carried out based on the principle of respect for human rights and fundamental freedoms. [17]

Thus, taking into account the above mentioned, the following conclusions can be drawn:

1. It is impossible to ensure human rights in Ukraine in today's conditions without taking into account historical experience in the form of constitutional and legal practice of their strengthening. The authors emphasized that the Constitution of Pylyp Orlyk of 1710, the Constitution of the UPR dated 29 April 1918, Laws on the Temporary State System of Ukraine, Declaration of UPR Directory, statutory instruments of modern Ukraine, Ukraine's independence, its territorial integrity, inviolability of borders comprised directions of the state policy in close and natural relationship with the proclamation of the inviolability of fundamental human rights and freedoms, but without providing guarantees in respect of them from the state.

2. It is proposed to introduce changes into the National Security Strategy of Ukraine dated 6 May 2015 — Section 3 “Immediate Threats to the National Security of Ukraine” and Section 4 “Principal Directions of the National Security of Ukraine” to envisage on a mandatory basis that the compliance with Section II of the Constitution of Ukraine is a priority of the Strategy. It should be noted that “immediate threats” to the national security of Ukraine are caused by the violation of human rights, and principal directions of the state policy should be ensuring inviolability of the human and civil rights, primarily, by state power and control.

3. The Verkhovna Rada of Ukraine has to accept Law of Ukraine “On Protection of Human and Civil Rights in Ukraine”, in the main sections of which the following should be defined: the concept of the mechanism to protect human and civil rights; constitutional and legal guarantees of the protection of human and civil rights in Ukraine; industry-specific legal guarantees of the protection of human and civil rights

in Ukraine; international legal guarantees of the protection of human and civil rights; state responsibility for the violation of human and civil rights in Ukraine.

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