Human rights and modernization of the Constitution of Ukraine

Human rights it is the universal category that includes the fundamental and inalienable person's possibilities for the purpose of ensuring free and decent existence and development, as well as the universal value that allows to compare and measure all the most important events that occur in society and the state. Moreover, it is not just the declaration of rights and freedoms at the level of the constitution of the state as a normative prescription, but a really effective constitutional and legal mechanism for the implementation and protection, it is an indicator of the presence of civil society as an attribute of the modern constitutional state. The rights and freedoms of an individual and citizen are the most important political and legal, social institution, the degree of development of society and nation, as well as the basis and content of the functioning of public authorities. It is such a functional approach to the institution of human rights and freedoms, *first of all*, serves as a mean of access of an individual and citizen to the mechanism of public power and the implementation of the forms of democracy, and *secondly*, it is an indisputable condition for the independence of a person. Human rights are an integral part of the nation's culture, the highest manifestation of the moral and legal ideals of mankind. Among the spiritual values of the modern world, they occupy one of the most significant places. It is human rights that are an important indicator of the development of states, oriented towards democratic values, consolidating all life support systems of the human community and acting as an important factor in the strategy of world sustainable development.

Currently, the analysis of tendencies for the development of human rights demonstrates a comprehensive and contradictory way of their implementation. Every new stage in the development of mankind raises new difficulties; humanity should not only weaken the struggle for human rights, but also unite its efforts to overcome new emerging anti-human situations, because the stable development of the modern world is impossible without the implementation of human rights.

However, it is undeniable that the current state of legal regulation of human and civil rights and freedoms falls under the influence of two mutually conditioned systems, namely international and national law, that is, the constitutional and legal institution of the legal status of an individual and citizen in the current conditions of state and legal reality more often is the subject matter to the rules of international law. Such tendencies are also characteristic for the national legal system of Ukraine.

The study of the phenomenon of human and civil rights and freedoms as the fundamental basis and fundamental value of civil society and state does not lose its relevance, but only gains momentum. Modern legal science is constantly replenished with scientific research in the field of human rights.

Theoretical and legal, constitutional and international aspects of human and civil rights and freedoms are highlighted in the fundamental writings of Ukrainian scholars, namely Holovatyi S. P., Kliuchkovskyi Yu. B., Rabinovych P. M., Rechytskyi V. V., Shapoval V. M. and others.

At the same time, it must be noted that the law-making activity and law-enforcement practice of Ukraine in the field of human and civil rights and freedoms needs to be improved, especially in the context of the declared European integration course of Ukraine. Outstanding example of the above is the fact that Ukraine is among the top five of the Member States of the Council of Europe in terms of the number of cases that are pending before the European Court of Human Rights.

According to the opinion of Ukrainian scholars, the constitutional consolidation of the rights and freedoms of an individual and citizen, under all conditions has no self-sufficient and absolute value. Ukraine as the post-Soviet country has a gap between the values established in the Basic Law and those that exist in public and state practice. In fact, we believe one should agree with this statement. Considering the fact that the institution of human and civil rights and freedoms is the branch constitutional and legal institution that is largely influenced by the principles and norms of international law, however, there is no single unified approach to the definition of human rights among scholars in the field of constitutional law. The definitions of human rights in the science of constitutional law are based, to a greater extent, on different concepts of the essential understanding of the phenomenon of the rights and freedoms, namely the natural and legal or positivist approach.

However, as scholars note, the issues of the rights and freedoms of an individual and citizen are nowadays the source for the legal science. Given the landmark of the provision of the rights and freedoms, the researched modern state must acquire fundamentally new qualities and, accordingly, to be changed in its organizational and functional characteristics in the context of modern constitutionalism.

As S. Holovatyi notes, although it was already a quarter century since Ukraine has chosen a path to democracy and somewhat later joined the fundamental European documents, which form the foundation and parameters of the European legal space based on European values, the current state of legal education in our country is rather not consistent with European models.

According to P. M. Rabinovych, the modern level of cognition of the phenomenon of human rights, the accumulation of theoretical knowledge and practice of protective activities in the area of human rights requires the organization and synthesis of scientific data on the nature and regularities of the formation and development of the phenomenon of human rights, first of all at the general theoretical level, and subsequently – taking into account the above mentioned provisions in the process of constitutional and legal improvement of fundamental human rights and freedoms [6, p. 24].

We believe that the constitutional and legal status of an individual and citizen, in today's conditions of international cooperation and interaction, as well as in the light of events within the Ukrainian state of the last decade, which, in turn, radically affect and change legal awareness and legal thinking, must be based on a synthesized concept of an individual, which unites the basic rights, freedoms and responsibilities in all their dimensions and manifestations, as well as within the interrelated connection of the person – the state – the society. This convinces that proper legal provision of the mechanism for the implementation and guaranteeing human and civil rights and freedoms in Ukraine at the present stage should become fundamental in the field of any reforms. Indeed, human rights and freedoms in the countries with developed democracy are prerequisite for the implementation of the rule of law principle, constitutionality and legality.

Despite the fact that the rights and freedoms, which in turn are the highest value of the person, nowadays require not only a political declaration, but, on our deep conviction, the introduction of the legal mechanism for ensuring their implementation and guaranteeing.

As S. P. Dobrianskyi notes, the fundamental human rights at present serve as a kind of system of initial criteria for the legislation and legal practice of the states of the modern community – criteria that none of them is not entitled to ignore.

It should be noted that the world community has developed a fairly wide range of international documents that contain the system of principles and norms regulating the rights and freedoms of an individual and citizen. In particular, the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Charter of the European Union on Fundamental Rights (1961), and others belong to the fundamental acts of universal and regional levels.

The main efforts of the United Nations and other international organizations in the XXI century will focus on the further development and application of radical measures to protect fundamental human rights and freedoms, where international humanitarian law and international human rights protection will be central to the world community's activities.

Compared to the fundamental international standards and values in the field of human rights, Ukraine practically at the end of the XX century, for the first time systematically enshrined the catalog of human and civil rights and freedoms, in particular, natural, political, economic, social and cultural. It was done in the Constitution of Ukraine of 1996, namely in the Section II "Rights, Freedoms and Responsibilities of an Individual and Citizen". Besides, it should be noted that the very constitutional consolidation of the rights and freedoms in the Section II is the evidence and provides importance to the institution of human rights. Along with this, despite the fact that the largest

number of Articles in the quantity is contained in the Section II, which fully testifies to the democratic nature of the Basic Law, the structuring of the Section II needs to be improved.

In this regard, the well-known human rights' specialist S. Holovatyi emphasizes that, considering the diversity of the Section II of the Constitution of Ukraine (more precisely, its "non-structural nature") and the fact that the examples of the "rights" presented here are of a non-uniform nature, The Venice Commission recommended at the stage of discussing the draft of the new Constitution, to "classify and systematize" them in such a way that it would be possible to anticipate respectively different methods of protecting each right. After all, the effectiveness of each method of protecting a different subjective right depends on the function of such a specific method of protection. And it, in turn, is determined by the content of each subjective right.

Examples of structuring in terms of normative definition and establishment of human and civil rights and freedoms are the constitutions of the world states, in particular the Constitution of the Portuguese Republic, the Constitution of the Italian Republic, the Constitution of the Kingdom of Spain, the Constitution of the Republic of Poland, etc.

Given the foregoing, we believe that the improvement of the Constitution of Ukraine in terms of its structuring is relevant and should be implemented. Namely, it is necessary to distinguish (in separate parts within the General Section) the fundamental principles of human rights and freedoms, in particular the principle of universality, equality, responsibility of the agencies and officials of public authority; personal rights, freedoms and guarantees; the rights, freedoms and guarantees in the political sphere; social, economic and cultural rights, freedoms and guarantees, etc.

In accordance with the Art. 1 of the Constitution, Ukraine is recognized as the constitutional state, and this, first of all, implies that the rule of law state acts as a form of restriction of power by human rights and freedoms, as the most important counterweight to the tyranny of state power. The main principle of the state policy in the field of ensuring human and civil rights and freedoms is defined in the Art. 3 of the Constitution of Ukraine, namely, "An individual, his life and health, honor and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Affirming and ensuring human rights and freedoms shall be the main duty of the State".

However, the constitutional text of the Art. 3 is criticized both by scholars and the Venice Commission. As S. Holovatyi emphasizes, this "socially-oriented" understanding of *a man per se* and its value as part of the Art. 3 of the Constitution of Ukraine is extremely harmful for understanding the essence of the nature of society, the origin of power, the place and role of the state in relations with a man and the place and role of a man in relations with the state. He further emphasizes that until the term "social" in the phrase "social value" (in relation to a man and his dignity) is not removed from Part 1

of the Art. 3 of the Constitution of Ukraine, there will still be a formal obstacle to the possibility to accept human dignity within the framework of the Ukrainian legal order likewise to the German constitutional experience – as the "right of rights", as "the peak of the whole system of fundamental rights", i.e., as the constitutive principle of the whole system of fundamental rights.
According to our belief Ukraine has the social necessity of realizing the principle of the priority of human rights in relation to the state and limiting the omnipotence of the state by human rights at the constitutional level, namely, with the growing role of civil society that we are observing today, the constitutional and legal consolidation of the rights and freedoms of an individual and citizen should be based on the universal principle of equality of all subjects of social relations, including the state. Only under this condition, the national legal system of Ukraine, in the part of its normative component, will be able to depart forever from the Soviet doctrine of law, where the state was recognized as the priority subject of legal relations.

In regard to the above considerations, the Art. 1 of the Basic Law of the Federal Republic of Germany (1949) is the outstanding example, namely "(1) Human dignity shall be inviolable. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and justice in the world. (3) The following basic rights shall bind the legislature, executive and judiciary as directly applicable law".
The essence of the constitutional regulation of the basic rights and freedoms of an individual and citizen in democratic societies is not only to consolidate them (to declare), but to guarantee them. The problem of the reality, security and protection of human and civil rights and freedoms is directly related to the specific features of socio-economic development of the region, the development of political institutions, political awareness and the activity of residents of a particular administrative and territorial unit.
The phenomenon of the Ukrainian state and the formation of law in early XXI century were the European integration aspirations, which were embodied in the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Brussels in 2014.

One of the goals of the political dialogue enshrined in the Art. 4 of the Association Agreement is "to strengthen respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons who belong to minorities, and respect for diversity, as well as contributing to the consolidation of national political reforms". The Art. 14 of the Agreement, entitled "The rule of law and respect for human rights and fundamental freedoms", states that "cooperation in the field of justice, freedom and security will take place on the basis of respect for human rights and fundamental freedoms".

According to scholars, the rule of law requires the state to implement it into law-making and law-enforcement activities, in particular in laws that, in their content, should be primarily permeated by ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that the law is not restricted only to legislation as one of its forms, but also includes other social regulators, in particular norms of morality, traditions, customs, etc., which are legitimized by society and united by the quality that corresponds to the ideology of the idea of justice rights, which to a large extent have been reflected in the Constitution of Ukraine.

Thus, the actual legal formulation of the European integration of Ukraine entails inevitability of the reform of the national legislation of Ukraine, including in the part of the constitutional and legal regulation of human and civil rights and freedoms, that is, the rhetoric about European values and standards should go to the practical plane, namely, the rights and the freedom of an individual and citizen must determine the essence and content of regulatory acts, as well as direct the activities of the state and local self-government agencies and officials.

The effectiveness of Ukraine on the path to European integration, which used to be the imagination of an unknown future, is beginning to be developed in a more or less understandable form now. This new tendency, which has already acquired a certain legal form, entails the inevitability of reforming the national legislation, in particular the Fundamental Law of the State – the Constitution of Ukraine. Our European partners need to understand the Ukrainian strategy, and it is not just about official documents. Although, they are very important. The priorities should be very clearly defined. After all, according to the Art. 2 of the Law of Ukraine "On the Principles of Internal and Foreign Policy" dated from July 8, 2018, the principles of internal and foreign policy are based on unconditional compliance with the Constitution of Ukraine, ensuring the rights and freedoms of an individual and citizen in Ukraine and guaranteeing the rights and freedoms proclaimed by the Constitution of Ukraine, on generally accepted principles and norms of international law, ensuring the social orientation of the Ukrainian economy and sustainable socio-economic development of Ukraine, strengthening of democratic foundations of public and state life, providing the rule of law, the economic and political independence of the state, the protection of its national interests, the establishment of Ukraine as a full and authoritative member of the world community.

Therewith, the National Strategy for Human Rights was approved by the Decree of the President of Ukraine dated from August 25, 2015, the purpose of which is to ensure the priority of human rights and freedoms as a determining factor in the definition of the state policy and decision-making by public authorities and local self-government agencies.

In our opinion, the problem of ensuring and guaranteeing the rights and freedoms of an individual and citizen in Ukraine at the present stage has the central place in the mechanism of the implementation of constitutional and legal norms. Since, almost fifty provisions of the Section II of the Constitution of Ukraine are of a postponement nature, which leads to different interpretations of the constitutional norms as a matter of fact in the course of their enforcement, and this does not always take place in line with the basic constitutional values and principles of freedom and democracy.

As S. Holovatyi notes, true democracy, human rights and the rule of law as the basis of European law and order are a triad of values that are inextricably linked with one another. According to the author, human rights as a part of the system of a unified European order should be considered in the light of the normative content of the category of human rights through its two other components – democracy and the title.

Proceeding from the content of Part 3 of the Art. 8 of the Constitution of Ukraine "Norms of the Constitution of Ukraine there shall be the norms of direct effect. Resource to the court for protection of constitutional rights and freedoms of an individual and citizen directly on basis of the Constitution of Ukraine shall be guaranteed" [7], which, in general, establishes the highest legal force and their direct action, the rights and freedoms of an individual and citizen, under such conditions, are the duty to ensure and guarantee by the whole system of public authorities. In this case, there is a problem in the further legal development for the implementation of the mechanism for ensuring the rights and freedoms. And this is why the prescription of this constitutional norm should become the basis for further consolidation of the norm in the Section II of the Constitution of Ukraine, according to which the rights and freedoms of an individual and citizen would determine the essence, content and adoption of normative and legal acts, as well as would direct the activities of the legislative, executive and judicial power and local self-government agencies. Another issue is that the necessary laws are not adopted or existing legal provisions, in fact, instead of further development of the rights and freedoms make their application impossible.

Actually, the filling of the fundamental rights and freedoms of an individual and citizen with the real meaning can take place both through the adoption of regulatory acts and by the interpretation of the content of the norms by the Constitutional Court of Ukraine. However, the problem is that urgent laws quite often in Ukrainian practice, are not adopted, which makes it impossible to implement certain rights and freedoms in general.

It is quite evident that, despite constitutional reform (amendments to the Constitution of Ukraine in 2004), constitutional modernization (repeated amendments and alterations to the Constitution of Ukraine), the rights and freedoms of an individual and citizen need not only improvement at the legislative level, but also the creation of an effective mechanism for their implementation and protection.

Namely, in the context of the foregoing, there should be a concretization of the content of the constitutional and legal norms in part of human and civil rights and freedoms, which, in turn, is an important condition for the implementation of legal norms in the field of human rights and freedoms. Moreover, the modernization of the Section II of the Constitution of Ukraine should be based on the generally recognized system of values and their associated ideas, views, and principles on the place and role of human rights in society and the state.

According to P. M. Rabinovych, the Constitution of Ukraine should be brought into more complete conformity with international "law and humane" standards, in particular through: 2. To specify the content of the rule of law principle and its correlation with the principle of legality ... 5. The grounds for restricting the rights of an individual and citizen should be adjusted in such a way that they are not wider than those specified in international treaties ratified by Ukraine.

In the context of the foregoing, it should be emphasized that in accordance with Parts 2 and 3 of the Art. 22 of the Constitution of Ukraine "The constitutional rights and freedoms shall be guaranteed and shall not be abolished. The content and scope of the existing rights and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws". The provisions of this constitutional norm have an extremely important legal significance, but in the light of the current tendencies of international cooperation, they require wider guarantees in accordance with generally accepted principles and norms of international law. It should be noted that the real situation with the observance of human and civil rights and freedoms depends to a large extent on the education, development of self-respect and self-awareness of citizens, their readiness to have these rights, to implement and protect against any unlawful actions, it is necessary to state that this potential in the Ukrainian society is still insufficient. However, public demand for improving legislation on human rights and freedoms, awareness of relevant norms begins to increase.

Summarizing the above, it should be noted that the main expected results regarding the improvement of the Constitution of Ukraine in terms of human and civil rights and freedoms should be, *first of all*, the principle of priority of human and civil rights in relation to the state should be the primary, fundamental, determining and system-forming factor of the legal state and functioning of the public authority system. The constitutional state (the Art. 1 of the Constitution of Ukraine declares Ukraine as it is) must provide a compromise in society that is based on common sense, and the rights and freedoms of an individual and citizen must ensure the autonomy of an individual in relation to the state. The development and functioning of the rule of law state is possible only in the society, where there is agreement of citizens in regard to the basic principles of the structure of society and the strategy and goals of its development. *Secondly*, the necessity of real

provision of the principle of the priority of human rights in relation to the state at the constitutional level and the restriction of the state's sovereignty by human rights, i.e., under the condition of an increase in the role of civil society, the constitutional and legal norms regarding human and civil rights and freedoms should be based on the universal principle of equality of all subjects of social relations, including the state. Therefore, the introduction of amendments to the Constitution of Ukraine in part of human and civil rights and freedoms should ultimately ensure, in particular, the integrity and fundamental nature of the Constitution of Ukraine for law-making and law-enforcement practices in the context of general areas of constitutional and legal regulation. *Thirdly*, the Section II of the Constitution of Ukraine needs its structuring, with the purpose of proper practical provision of guaranteed human and civil rights and freedoms.

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INNOVATIONS IN SCIENCE:
THE CHALLENGES OF OUR TIME

Monograph
Volume 2

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