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CONSTITUTIONAL PRINCIPLES OF CIVIL SOCIETY UKRAINE IN THE PERIOD OF MARTIAL LAW

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Summary

The purpose of the article is to clarify the peculiarities of the functioning civil society institutions Ukraine during the martial law. This became possible through the analysis of constitutional provisions, which are fundamental guarantees ensuring their activity; determination of certain aspects constitutional provision citizens' right of to association during martial law, identification of contradictions between the provisions of the Constitution of Ukraine and other laws that determine the peculiarities functioning civil society institutions.

Specialists in various fields of law, including A. Kolodii, N. Filyk, Y. Bysaga, S. Kyrychenko V. Kornienko, O. Lotiuk, H. Berchenko, P. Liubchenko, S. Kovalchuk, have dealt with constitutional foundations of the formation of civil society. However, the new threats posed by the military actions, changes in the legal system necessitate additional detailed scientific analysis.

Research methods. The author's methodological analysis included a number of general scientific and special scientific methods of cognition, the application of which made it possible to reveal the essence of the proposed problem. The method of analysis and synthesis, systematic methods of scientific knowledge, the method of comparative jurisprudence and synergetic method were used. In particular, the method of comparative jurisprudence was used to identify contradictions and inconsistencies between the legal provisions of the Constitution and some other laws of Ukraine. Synergetic method allowed to state binary nature of legal reality and uncertainty in a martial law.

Results and conclusions. According to the results of the analysis of the constitutional provisions, it was determined that the basis of the functioning of civil society institutions is the rights and freedoms of a person and a citizen. In the conditions of martial law, some of the rights and freedoms of a person may be violated. Given the presence of threats to national security, the management of state institutions is being strengthened. Strengthened state regulatory activity consists in granting additional powers to its bodies and institutions. This also affects the peculiarities of the activities of non-state entities, which are institutions of civil society. Some inconsistencies between the provisions of the Constitution of Ukraine and the laws that determine the procedure for the creation and functioning of civil society institutions have been revealed.

Key words: institution of civil society; special legal regime; constitutional principle; civil society organization; democratic process; Ukraine.

1. Introduction

The activities of civil society institutions in Ukraine are regulated by legislation acts. The main among them is the Constitution of Ukraine. It defines the people's rights, freedoms and duties. The Constitution of Ukraine has the highest legal force. Laws and

other normative legal acts are adopted based on the Constitution of Ukraine and must comply with it.

Constitutional rights and freedoms cannot be limited, except in cases provided for by the Constitution of Ukraine. Such cases include martial law or state of emergency. On February 24, 2022, a special legal re-

gime “martial law” was introduced. It continues to this day. That is the institutions of the state and civil society functions in a special legal regime. In order to ensure national security, a significant number of changes were made to laws of Ukraine among this period. The question of how these changes limit human rights and the harmonious functioning of civil society institutions is still open. Scientists have not yet studied them in detail.

The task of the constitutional legal doctrine of nowadays is to analyze the transformation of legal practice in the context of global challenges and determine the optimality of limited rights and legitimacy of state measures of a preventive nature (Zharovska, 2022, p. 16). Therefore, several questions are remain unsolved. The first is about what constitutional mechanisms for the realization of rights are available to civil society institutions under the conditions of the legal regime of martial law taking into account the existing restrictions. The second is about how the changes made to the normative legal acts affect this process is relevant. That’s why the new threats posed by the military actions, changes in the legal system necessitate additional detailed scientific analysis. Completing this task is possible by applying the methods of analysis, synthesis, comparative legal method, system-structural, synergistic and other methods.

2. Human rights as the guarantee of civil society development

The prerequisites for the adoption of The Constitution of Ukraine were the course to ensure the rights and freedoms of people and citizen, the creation of decent living conditions and the development of civil society, the strengthening of civil harmony on the land of Ukraine, etc. That is why the person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights, freedoms and their guarantees determine the essence and direction of state activity. The state is responsible to the individual for its activities. The establishment and provision of human rights and freedoms is the main duty of the state (The Constitution of Ukraine, 1996).

The principles of civil society are: freedom and initiative of the individual to them; the development of social relations in accordance with the fundamental principle of Kantian philosophy, according to which a person should always be considered as an end and never as a means; elimination of human alienation, people’s non-acceptance of socio-economic reforms and transformations, economic and political structures and institutions; real implementation of the principle of equal opportunities; permanent protection of human and citizen rights and freedoms; pluralism of all forms of ownership; the existence among the absolute majority of the population of the so-called “middle layer”; pluralism of the spiritual life of society; the official prohibition and

practical absence by the state and other social entities of absolute regulation and any interference in the private life of members of society; the existence and functioning of a developed social structure; active participation in all spheres of public life of non-state self-governing organizations; development of market relations; recognition and guarantee of the ideas of the rule of law; subordination to civil society of a democratic legal social state (Kolodiy, 1999, p. 16-17). In other words, the civil society institutions activity guarantees by the components of the legal status of a person.

3. Citizens’ right to association: constitutional guarantees

Citizen of Ukraine has the right to freedom of association in political parties and public organizations to exercise and protect their rights and freedoms and satisfy political, economic, social, cultural and other interests. According to Art. 36 of the Constitution of Ukraine, the defining duty and principle of the rule of law state is the principle of non-interference by the state in the exercise of the right to freedom of association by citizens, their activities.

At the same time, it is necessary to emphasize the inconsistency of the provisions of Art. 36 of the Constitution of Ukraine and Art. 7 of the Law of Ukraine “On Public Associations”. The first provides that only citizens of Ukraine have the right to freedom of association in public organizations (The Constitution of Ukraine, 1996). The second enshrines such a right even for foreigners, stateless persons (About public associations, 2012). In our opinion, after the end of martial law, appropriate changes should be made to the Constitution of Ukraine.

It is the right of a citizen of Ukraine to participate in trade unions in order to protect their labor and socio-economic rights and interests. Trade unions are formed without prior permission based on the free choice of their members. All trade unions have equal rights. Exclusively Constitution of Ukraine and the laws of Ukraine establish restrictions on membership in trade unions.

Citizens are guaranteed the right to religious associations. At the same time, the provisions of Article 35 of the Constitution of Ukraine should be taken into account. It guarantees the right to freedom of worldview and religion, to participate in religious cults and rites, to conduct religious activities, to separate the church and religious organizations from the state, etc.

The principles of formation and activity of citizens are determined exclusively by laws. Therefore, it is important to take into account the fact that some components of the policy of promoting the formation of civil society and its institutions were reflected in the Laws of Ukraine: “On Freedom of Conscience and Religious Organizations” (1991), “On Professional Creative Workers and Creative Unions” (1997), “On local

self-government in Ukraine” (1998), “On trade unions, their rights and guarantees of activity” (1999), “On self-organization bodies of the population” (2001), “On the principles of regulatory policy in the field of economic activity” (2003), “On social dialogue in Ukraine” (2010), “On volunteering” (2011), “On public associations” (2012), “On employers’ organizations, their associations, rights and guarantees of their activities” (2013), “On charitable activities and charitable organizations (2013)”, “On social services” (2019), “On the basic principles of youth policy” (2021), “On the basic principles of state policy in the sphere of establishing Ukrainian national and civic identity” (2022) etc.

4. Principles of activity of civil society institutions during martial law

The democratic institutions activities under special legal regimes are characterized by the presence of a significant number complications and contradictions. Ukrainian society, personified by institutions civil society, is currently actually involved in countering the military aggression of the enemy, in the material and financial support of the Armed Forces of Ukraine and paramilitary formations, as well as assisting to the victims and carrying out other types of activities. The active civic position of Ukrainians contributed to the consolidation our people. However, the prerogative in the performance of these tasks and functions should still be by state authorities.

Article 64 of the Constitution of Ukraine defines those rights that may be limited during martial law. They include the right to participate in the management of state affairs, in all-Ukrainian and local referendums, to freely elect and be elected to state and local self-government bodies (Article 38); the right to assemble peacefully, without weapons, and to hold meetings, rallies, marches and demonstrations (Article 39) among them (The Constitution of Ukraine, 1996). That is, the constitutional principles that are fundamental for the construction and development of civil society during the operation of the legal regime of martial law may be limited. At the same time, in order to prevent arbitrarily restricting the constitutional rights of a person, the legislation defines guarantees of the inadmissibility of using these regimes to restrict the rights and freedoms of a person, etc. (Kryvoruchko et al., 2023, p. 229; Shelever et al., 2023, p. 256). It should also be taken into account that the European Court of Human Rights indicated that restrictions on the rights and freedoms of a person and a citizen are permissible if they are carried out in accordance with the current legislation and comply with the rule “preserving the basic content of rights and freedoms”.

The interests of national security, a significant number of changes were made to the laws during the martial law. They were mostly related to the procedure for the operation and registration of such associations. Thus, in Ukraine it is categorically prohibited to form and

operate public associations whose activities are aimed at liquidating the independence of Ukraine, changing the constitutional order by violent means, violating the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of state power, propaganda of war, violence, to incite inter-ethnic, racial, religious enmity, encroachment on human rights and freedoms, public health, propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols, violation of the equality of citizens depending on their race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status and other (About public associations, 2012).

If the purpose of public associations activities is at least one of the above, it must be prohibited by the court. The activities of those organizations whose leaders are convicted of treason are also subject to termination. The Law of Ukraine “About Freedom of Conscience and Religious Organizations” also underwent such changes (About Freedom of Conscience and Religious Organizations, 1991). These provisions are the embodiment of the norm provided for in Art. 37 of the Constitution of Ukraine. The formation and activity of political parties and public organizations are prohibited whose program goals or actions are aimed at eliminating the independence of Ukraine, changing the constitutional order by violent means, violating the sovereignty and territorial integrity of the state, violence etc. (The Constitution of Ukraine, 1996).

There is currently a provision at the legislative level on the termination of the activities of trade unions and their associations for the purposes of Ukraine national security. This happens if the activity of the latter contradicts the Constitution of Ukraine and the laws of Ukraine. In particular, in the case of criminal liability conviction for collaboration with the Russian Federation. As a rule, their activity is prohibited based on a decision of a local court, and trade unions with the status of All-Ukrainian and National and associations of trade unions with the corresponding status – only by a decision of the Supreme Court of Ukraine (About trade unions, their rights and guarantees of activity, 1999).

The activity of civil society institutions in the direction of charitable activities was intensified, in particular, volunteer assistance. Law of Ukraine “About volunteering” also was changed. Currently, the areas of volunteer activity are meeting the needs of the Armed Forces of Ukraine, other military formations, law enforcement agencies, state authorities and individual citizens, implementing evacuation measures (About volunteering, 2011).

5. Conclusions and prospects for further exploration

According to the results of the analysis of the constitutional provisions, it was determined that the basis of the functioning of civil society institutions is the

rights and freedoms of a person and a citizen. In the conditions of martial law, some rights and freedoms person may be violated. Given the presence of threats to national security, the management of state institutions is being strengthened. Strengthened state regulatory activity consists in granting additional powers to its bodies and institutions. This also affects the peculiarities of the activities civil society organizations. Some inconsistencies between the provisions of the Constitution of Ukraine and the laws about creation and functioning of civil society institutions have been revealed. It is expedient to make appropriate changes to the Constitution of Ukraine after the termination of martial law.

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ІНСТИТУТИ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА В УМОВАХ ВОЄННОГО СТАНУ: КОНСТИТУЦІЙНИЙ ВИМІР

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Анотація

Метою статті є з'ясування особливостей функціонування інститутів громадянського суспільства України в умовах воєнного стану. Це стало можливим завдяки аналізу конституційних положень, які є основними гарантіями забезпечення їх діяльності; визначення окремих аспектів конституційного забезпечення права громадян на об'єднання під час воєнного стану, виявлення суперечностей між положеннями Конституції України та інших законів, що визначають особливості функціонування інститутів громадянського суспільства.

Дослідженням конституційних засад формування громадянського суспільства займалися фахівці різних галузей права, зокрема А. Колодій, Н. Філик, Ю. Бисага, С. Кириченко, В. Корнієнко, О. Лотюк, Г. Берченко, П. Любченко, С. Ковальчук та багато інших. Проте нові загрози, пов'язані з військовими діями, змінами, яких зазнає правова система, вимагають додаткового детального наукового аналізу.

Методи дослідження. Авторський методологічний аналіз включав низку загальнонаукових та спеціально-наукових методів пізнання, застосування яких дозволило розкрити сутність запропонованої проблеми. Використано метод аналізу та синтезу, системні методи наукового пізнання, метод порівняльного правознавства та синергетичний метод. Зокрема, методом порівняльного правознавства виявлено протиріччя та неузгодженість правових положень Конституції та деяких інших законів України. Синергетичний метод дозволив констатувати бінарність правової реальності та невизначеності в умовах воєнного стану.

Результати та висновки. За результатами аналізу конституційних положень встановлено, що основою функціонування інститутів громадянського суспільства є права і свободи людини і громадянина. В умовах воєнного стану деякі права і свободи людини можуть бути обмежені. Враховуючи наявність загроз національній безпеці, посилюється управління державними установами. Посилення державної регуляторної діяльності полягає в наданні додаткових повноважень її органам і установам. Це позначається і на особливостях діяльності недержавних суб'єктів, які є інститутами громадянського суспільства. Виявлено деякі неузгодженості положень Конституції України та законів, які визначають порядок створення та функціонування інститутів громадянського суспільства.

Ключові слова: інституція громадянського суспільства; особливий правовий режим; конституційний принцип; організація громадянського суспільства; демократичний процес; Україна.