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CONSTITUTIONAL CONSOLIDATION OF THE HUMAN RIGHTS FUNCTION OF THE JUDICIARY IN UKRAINE

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The article is devoted to the study of the constitutional consolidation of the human rights function of the judiciary in Ukraine. It is noted that the judiciary is one of the most effective means of protecting human rights from violations.

It is argued that the judicial form of protection of human rights and freedoms is best suited to the full, comprehensive and objective identification of the facts of the case, the causes of the offenses and the establishment of the objective truth.

It is proved that in the legislation of Ukraine the human rights function of the judiciary is enshrined through the constitutional consolidation of guarantees of judicial protection of human rights and freedoms. The normative basis for consolidating the human rights function of the judiciary in Ukraine is the Constitution, which enshrines fundamental human rights and freedoms, guarantees of their implementation and a list of legal remedies.

Keywords: *judiciary, functions of the judiciary, law enforcement function, human rights, human freedoms, judicial protection, guarantees of judicial protection, justice, access to justice.*

КОНСТИТУЦІЙНЕ ЗАКРІПЛЕННЯ ПРАВОЗАХИСНОЇ ФУНКЦІЇ СУДОВОЇ ВЛАДИ В УКРАЇНІ

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Стаття присвячена дослідженню конституційного закріплення правозахисної функції судової влади в Україні. Зазначено, що діяльність судової влади є одним з найефективніших засобів захисту прав людини і громадянина від порушень.

Стверджується, що судова форма захисту прав і свобод людини є найбільш пристосованою до повного, всебічного та об'єктивного виявлення фактичних обставин справи, причин правопорушень та встановлення об'єктивної істини.

Доведено, що в законодавстві України правозахисна функція судової влади закріплена через конституційне закріплення гарантій судового захисту прав і свобод людини. Нормативною основою закріплення правозахисної функції судової влади в Україні є Конституція, в якій закріплено основні права та свободи людини, гарантії їх здійснення та перелік юридичних засобів захисту.

Ключові слова: *судова влада, функції судової влади, правозахисна функція, права людини, свободи людини, судовий захист, гарантії судового захисту, правосуддя, доступ до правосуддя.*

APROBAREA CONSTITUȚIONALĂ A EXERCITĂRII FUNCȚIEI DREPTURILOR OMULUI DE CĂTRE SISTEMUL JUDICIAR DIN UCRAINA

Articolul este dedicat studiului consolidării constituționale a funcției de protecție a drepturilor omului de către sistemul judiciar din Ucraina. Se observă că sistemul judiciar este unul dintre cele mai eficiente mijloace de protecție a drepturilor omului împotriva încălcărilor.

Se susține că forma judiciară de protecție a drepturilor și libertăților omului este cea mai potrivită pentru identificarea completă, cuprinzătoare și obiectivă a faptelor, cauzele infracțiunilor și stabilirea adevărului obiectiv.

Baza normativă pentru consolidarea funcției drepturilor omului din sistemul judiciar din Ucraina este Constituția, care consacră drepturile și libertățile fundamentale ale omului, garanțiile aplicării lor și o listă de căi de atac legale.

Cuvinte-cheie: *sistemul judiciar, funcțiile sistemului judiciar, funcția de aplicare a legii, drepturile omului, libertățile omului, protecția judiciară, garanțiile protecției judiciare, justiția, accesul la justiție.*

Introduction. The Constitution of Ukraine proclaimed man, his life and health, honor and dignity, inviolability and security as the highest social value in Ukraine, enshrined a wide range of rights and

freedoms, and imposed a duty to guarantee, ensure and protect human rights and freedoms on the state (Art. 3 of the Constitution of Ukraine [1]).

In the implementation of this important state

function, all state bodies, without exception, take part, but only the judiciary is endowed with a leading role in the entire human rights mechanism of the state.

Formulation of the problem. The purpose of the article is a scientific and theoretical study of the constitutional consolidation of the human rights function of the judiciary in Ukraine.

Analysis of research and publications. The following Ukrainian scholars have dealt with the problems of the functioning of the judiciary in the field of ensuring the implementation of constitutional human rights and freedoms and protection in case of their violation: V. Boyko, V. Bryntsev, V. Horodovenko, V. Hryniuk, M. Kovaleva, A. Kolodiy, V. Kravchenko, V. Malyarenko, I. Marochkin, I. Mikhailovska, A. Oliynyk, P. Rabinovych, S. Rabinovych, N. Sibilyova, V. Stefanyuk, M. Khavronyuk, S. Shevchuk, S. Shyshkin and others.

At the same time, the search for ways to improve the activities of courts to protect constitutional human rights and freedoms in Ukraine does not stop and does not lose relevance.

Main body. The judiciary is entrusted with the implementation of a special function – the legal protection of man in society. The right to protection is a component of the subjective right together with the right to one's own actions, as well as the right to demand certain behavior from obligated persons. This right may be exercised both on the initiative of a person in need of protection and on the initiative of authorized state bodies.

The judiciary is one of the most effective means of protecting human and civil rights from violations. Its task is to protect the basic universally recognized human rights and freedoms and to restore justice.

As the Ukrainian scholar I. Marochkin aptly noted, the judiciary has a special role to play in achieving the common goal of the rule of law, which is to curb the most brutal encroachments on the freedom and personal inviolability of man and citizen. Its role in the system of separation of state power is determined by the constitutional powers and social purpose of this branch of state power. The main purpose of the judiciary in society, the author calls the protection of human rights and freedoms and the resolution on the basis of current legislation of conflicts that arise in society [2, p. 29].

The human rights function of the court is reflected in justice, the content of which is to protect the rights, freedoms and interests of the individual. Confirmation of this thesis is the priority task of the court established by the legislator: «The court, administering justice on the basis of the rule of law, ensures everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine.

provided by the Verkhovna Rada of Ukraine, Article 2 of the Law of Ukraine «On the Judiciary and the Status of Judges» [3].

Justice is a specific type of state activity carried out by the court on the basis of the law in the manner prescribed by it, is to consider and resolve court cases to ensure guaranteed by the Constitution of Ukraine and laws human and civil rights and freedoms, rights and legitimate interests of legal entities and the state, and ends with a judicial decision, which is binding [4, p. 28-29].

In our opinion, justice administered by the courts is the most effective way to protect human and civil rights and freedoms. Judicial protection of human rights and freedoms is the most democratic and best suited to the full, comprehensive and objective identification of the facts of the case, the causes of legal disputes, offenses and the establishment of objective truth. The courts are endowed with all the necessary powers to exercise human rights function.

Justice has a special place in the system of guarantees for the protection of rights, freedoms and legitimate interests, and access to it is an integral part of the right to go to court and a necessary prerequisite for its implementation. Given this, many scholars analyze the right to a fair trial and access to justice in the human rights system. According to Ukrainian scientist O. Ovcharenko, this right belongs to the procedural rights-guarantees enshrined at the national constitutional level, in ensuring which the state is obliged to play a significant role. The role of the state can be both in taking active actions aimed at creating specific mechanisms to ensure this right, and in refraining from taking actions that may create factual and legal obstacles to its implementation [5, p. 52].

The function of protection of human rights and freedoms in Ukraine is exercised by the judiciary primarily through the administration of justice. In this regard, in the science of constitutional law, justice is mainly defined as a legal procedure for the judicial authorities to exercise the functions of protection of human and civil rights and freedoms, consideration and final resolution of criminal, civil, administrative and other cases in accordance with the Constitution and laws of Ukraine.

In the national legislation of Ukraine, the human rights function of the judiciary is enshrined in the constitutional enshrinement of guarantees of judicial protection of human rights and freedoms. Thus, in accordance with Article 55 of the Constitution of Ukraine, everyone is guaranteed the right to appeal in court against decisions, actions or omissions of public authorities, local governments, officials and officials [1]. This right is absolute and no restrictions on the

right to judicial protection are allowed. In this regard, the state is obliged to fulfill both a negative obligation to the person (to refrain from creating procedural obstacles to access to court) and a positive obligation (to ensure proper and effective access to justice).

Despite the fact that the right of access to court is not enshrined at the level of the Constitution of Ukraine in the literal sense, in our opinion, it can and should be spoken of as a right guaranteed by the Basic Law of Ukraine, at least in the context of judicial protection.

This thesis can be confirmed by a systematic analysis of the provisions of constitutional norms, which establish:

- protection of human and civil rights and freedoms by the court, guaranteeing everyone the right to appeal in court against decisions, actions or omissions of public authorities, local governments, officials and officials (p. 1, 2 Art. 55 of the Constitution of Ukraine);

- the right of everyone, after using all national remedies, to apply for protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant (p. 4 of Art. 55 of the Constitution of Ukraine);

- belonging to the part of the national legislation of Ukraine of the current international agreements, the consent to the binding nature of which was given by the Verkhovna Rada of Ukraine (p. 1 of Article 9 of the Constitution of Ukraine);

- enshrining in the Constitution of Ukraine the provision that the rights and freedoms of man and citizen are not exhaustive, and therefore their list may be supplemented (p. 1 Art. 22 of the Constitution of Ukraine) [1].

The content of the right to judicial protection is revealed through its elements. A systematic analysis of the provisions of the Constitution of Ukraine reveals a number of norms that enshrine the right to go to court in some cases:

- the right to appeal in court against decisions, actions or omissions of public authorities, local governments and officials (p. 2 Art. 55 of the Constitution of Ukraine);

- the right to appeal at any time in court against his detention (p. 5 Art. 29 of the Constitution of Ukraine);

- judicial protection of the right to refute inaccurate information about oneself and one's family members and the right to demand the seizure of any information, as well as the right to compensation for material and moral damage caused by the collection, storage, use and dissemination of such inaccurate information. (p. 4 Art. 32 Constitution of Ukraine) [1].

As we can see, in this case it is not a question of the right to judicial protection as such, as the specified

provisions are subject to application in specifically defined legal relations. There is an opinion that the recognition of the principle of direct effect of the Constitution of Ukraine can be considered as a form of consolidating the right to judicial protection [6, p. 7].

Part 3 of Article 8 of the Basic Law provides that recourse to the court to protect the constitutional rights and freedoms of man and citizen is guaranteed directly on the basis of the Constitution of Ukraine. However, this provision cannot be considered as securing the right to judicial protection, because, firstly, the right to go to court is only one of the elements of the right to judicial protection, and secondly, part 2 of Article 8 guarantees the right to go to court only on the basis of the Constitution of Ukraine itself. In addition, the Constitution contains a number of articles that require a court decision to restrict a certain right. Thus, in accordance with Part 2 of Article 29 of the Constitution of Ukraine, no one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law.

According to P. 2 Art. 30 of the Constitution, a reasoned court decision is also required in the event of entry into a home or other property of a person, conducting an inspection or search in them. This provision is a guarantee of ensuring the inviolability of everyone's home, which is enshrined in Part 1 of Article 30 of the Basic Law [1].

Part 3 of Article 47 of the Constitution of Ukraine establishes that no one may be forcibly deprived of housing other than on the basis of a law by a court decision. The principle of inviolability of the right of private property enshrined in p. 4 Art. 41 of the Constitution of Ukraine is ensured, inter alia, by the constitutional requirement of Part 6 of the same Article on the possibility of confiscation of property only by court decision in cases, scope and procedure established by law. The Constitution of Ukraine also requires a court decision to restrict certain political rights. Thus, in accordance with p. 4 of Art. 37 of the Constitution of Ukraine, the prohibition of the activities of associations of citizens is carried out only in court.

Part 2 of Article 39 of the Basic Law stipulates that restrictions on the exercise of the right of citizens to assemble peacefully, without weapons, and to hold gatherings, rallies, marches and demonstrations may be imposed by a court in accordance with the law and only in the interests of national security and public order, to protect the health of the population or to protect the rights and freedoms of others. The provision of P. 1 Art. 62 of the Constitution of Ukraine should be considered separately, according to which a person is presumed innocent of committing a crime and cannot be subjected to criminal punishment until his guilt is

legally proven and established by a court conviction (principle of presumption of innocence) [1].

According to the legal position of the Constitutional Court of Ukraine set out in the Decision on the jurisdiction of acts on appointment or dismissal of officials of May 7, 2002 № 8-рп / 2002, judicial protection of human and civil rights and freedoms should be considered as a type of state protection and freedoms of man and citizen. And it is the state that assumes such an obligation in accordance with the second part of Article 55 of the Constitution of Ukraine. The right to judicial protection also provides specific guarantees for the effective restoration of rights through the administration of justice. The lack of such a possibility limits this right. And according to the content of the second part of Article 64 of the Constitution of Ukraine, the right to judicial protection cannot be limited even in a state of war or emergency (§ 14 p. 3 of the Decision of the Constitutional Court of Ukraine [7]).

In other Decision of Constitutional Court of Ukraine from April, 12 in 2012 № 9-рп/2012 in business about equality of parties of trial it is marked: "Nobody can limit in a right on access to the justice that embraces possibility of person to initiate a judicial trial and accept the direct participating in a trial, or confined such right" (p. 2.3 an explain part of Decision of Constitutional Court of Ukraine [8]).

In the context of maintenance of the article of a 55 Constitution of Ukraine Constitutional Court accepted the row of other decisions on questions realization of right citizens on access in a court and justice. In particular, it follows to remember Decision from November, 25 in 1997 № 6-зп in relation to the appeal of citizen H.P. Dzyuba in relation to a right on an appeal in the court of wrong acts of public servant Constitutional Court confirms a constitutional right each on a direct address to the court (point 1 operative part of a resolution of Constitutional Court of Ukraine) [9].

In Decision of Constitutional Court of Ukraine from December, 25 in 1997 № 9-зп on the basis of appeal of habitants of city Zhovti Vody specified: «Refuse to the court in the acceptance of lawsuit and other statements or complaints that answer the set law to the requirements is violation of right of judicial defence, that in accordance with a century 64 Constitutions of Ukraine can not limit» (point 2 operative part of a resolution of Constitutional Court of Ukraine [10]).

It is necessary to underline that a question of availability to the justice is extraordinarily actual and today, in fact his decision needs the acceptance of measures of organizational character, and also material, financial providing, decision of other important

questions in the field of realization of judicial reform.

Thus, availability of justice one of pre-conditions of claim of judicial branch of power as effective and proper mechanism of protection of rights and freedoms of man. The problem of availability of justice is not limited to the separate state, but also attracts attention international association, that is why it is possible to talk about internationalization of standards in industry of the judicial system. International law acts envisage a right on a just court and access in a court as his necessary element, underlining such properties of court next to it, as independence, impartiality and legality (Art. 6 European convention of human rights 1950 [11]). Reference to the duty of the state to provide to the person real, but not formal access in a court contained in the row of decisions of the European Court on human rights, and also recommendations and resolutions of Committee of ministers of Council of Europe.

It is important for the administration of justice, and therefore for the exercise of the human rights function of the judiciary, that the Basic Law of Ukraine enshrines the principle of the rule of law: «The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. Appeal to the court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Constitution of Ukraine is guaranteed» (p. 2 Art. 8 of the Constitution of Ukraine); «The norms of the Constitution of Ukraine are the norms of direct action. Appeal to the court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Constitution of Ukraine is guaranteed» (p. 2 Art. 8 of the Constitution of Ukraine) [1].

Analyzing the requirements of the rule of law and the rule of law enshrined in the Constitution, the famous Ukrainian scholar M. Kozyubra noted that the provisions of the Basic Law recorded the vast majority of such requirements, including the requirement of «impossibility to refuse justice» (p. 2 Art. 55, p. 2 Art. 124, etc.) [12, p. 6].

The Resolution of the Plenum of the Supreme Court of Ukraine «On the Application of the Constitution of Ukraine in the Administration of Justice» of October 1, 1996 № 9 clarifies that «based on the principle of the rule of law and the Constitution to protect these rights and freedoms from any encroachment by ensuring timely and high-quality consideration of specific cases» (§ 2, it. 1). Paragraph 2 states that «... judicial decisions must be based on the Constitution, as well as on current legislation that does not contradict it» [13].

According to S. Lunin, the essential rights to a judicially protected situation lie in the fact that it is

related to the legal status enshrined and guaranteed by the Constitution of Ukraine, using the legal norms of citizens in the political, economic and social spheres. The citizen's right to protected can be exercised fully to the official body, which remains, after the judicial system is created due to the fact that there are more truthful and legitimate employees of citizens and legal entities. The right concept of the protected is complex and contains in its basic elements of justice, it is necessary:

1) the possibility of a person to apply to the court with a request to protect his / her violated right;

2) the judiciary, administering justice in an appropriate form, thus exercises its functions;

3) the right to administer justice belongs only to the judiciary, as the assignment of judicial functions by someone else, as well as the delegation of judicial functions, is not allowed;

4) the need for legal and factual justification in court of the stated requirement through the implementation of constitutional and legislative norms on adversarial proceedings [14, p. 10].

Thus, it can be concluded that the right to judicial protection is a complex legal category, which means that any person has the opportunity on the basis of current procedural law to seek protection of their violated rights, freedoms and legitimate interests of the judiciary.

According to Article 124 of the Constitution of Ukraine «Justice in Ukraine is administered exclusively by courts. Delegation of court functions, as well as assignment of these functions to other bodies or officials is not allowed. The jurisdiction of the courts extends to any legal dispute and any criminal charge. In cases provided by law, the courts also consider other cases» [1].

Conclusions. In the list of all functions of the judiciary, the human rights function is a priority, which is explained by the following arguments: first, it is the implementation of this function associated with the separation of the judiciary in the system of state mechanism, which has a balancing and stabilizing role; secondly, other functions of the judiciary are derived from it, secondary functions.

Judicial protection is the highest and most effective form of protection of subjective rights, freedoms and interests, which provides each person with maximum procedural guarantees. Therefore, the right to judicial protection is a means of ensuring the legal possibility of a person to apply to the judiciary for protection in order to restore the violated right, take measures to prevent such violations in the future and bring offenders to justice.

The normative basis for consolidating the

human rights function of the judiciary in Ukraine is the Constitution of Ukraine, which enshrines the fundamental rights and freedoms of man and citizen, guarantees of their implementation and protection, as well as a list of legal remedies for human rights and freedoms, the use of which should ensure recovery in the event of their violation.

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