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V. M. Tertyshnyk, Doctor of Law, Professor
of the University of Customs and Finance

CIVILIZATIONAL CHOICE OF A STATE AND PROBLEMS OF CONSTITUTIONAL REFORM IN UKRAINE

The article covers the problem of ensuring the rule of law and harmonization of legislative, judicial and executive bodies, improvement of the law.

Our State has made a faithful civilizational choice and today is difficult, but keeps the course on the implementation of the principle of the rule of law. This complex and multi-faceted process must tap as a legal person – the State and the Organization of the authorities. Many problems of organization of power Ukraine received in succession for another moment of receiving its independence, but through a different. Reboot the individual institutions.

In the structure of the legislature it is advisable to foresee two chambers: the upper house – the Sejm, the Lower House, is the "Vice" (people's Assembly). For constructive updates, the legislature should set the general constitutional rule – a citizen can be a member of the Parliament of not more than two consecutive terms. For selected has who submitted a declaration of their profit and your wealth in General, and confirmed that most of his property on the territory of Ukraine. Regulations of the legislature should be simpler and allow promptly take crucial laws.

In the implementation of constitutional and legislative reform, it is important to strictly adhere to the principles of the rule of law, legal certainty, and in the legal positions of the European Court of human rights, the principle of proportionality. Requires the development of a conceptual model of the new Constitution of Ukraine and the procedure for its adoption by popular referendum. The implementation of this order the adoption of the Basic Law of the State.

Key words: *rule of law; constitutional process; referendum; local government.*

Розкрито проблеми гармонізації законодавчої, судової та виконавчої влади, вдосконалення законотворчої діяльності та забезпечення верховенства права, зміцнення гарантій захисту прав і свобод людини, формування цивілізаційних інституцій державотворення.

Суспільно-політична та правова криза в Україні обумовлюють необхідність нового суспільного договору громадян та влади, прийняття демократичної та юридично виваженої Конституції держави шляхом всенародного референдуму, що може стати ефективним способом гармонізації влади і суспільства.

Ключові слова: *верховенство права; конституційний процес; референдум; розподіл влади; місцеве самоврядування.*

Problem formulation. The idea of the distribution of power in the legislative, executive and judiciary, as one of the modern principles of the legal State, together with the system of checks, balances and limits the authority of the Hetman, to prevent corruption, were quite wisely implemented yet in the Constitution of Pylyp Orlyk 1710 a year. But the problem of harmonization and improvement of the constitutional bases of her organization is not completed and the date.

The urgency of the problem is caused by new turns of the constitutional reform, part of the conceptual provisions of which unveiled in the new bill for amendments to the current Constitution.

Analysis of recent researches and publications which discuss this problem shows that the problem of formation and organization of the activities of the legislature and harmonization of legislative process in the spotlight as politicians and scientists [1–12]. But the existing publication does not exhaust the whole complex problem, but rather to form a fundamental basis for subsequent research.

Purpose of the article is to identify ways of harmonizing power and the constitutional process.

Main material. Having inherited the legal system built up on the ideology of totalitarianism, the people of Ukraine chose the main path of their development, with the aim of building a democratic, social legal state and consolidating these concepts in the main law of the state.

The fundamental principles of law that need more attention are the principles of separation of powers, rule of law and the responsibility of the state to the individual.

The executive branch of power in Ukraine was a “two-headed”, divided into two parallel functioning and often duplicated one another system: the President with the President’s Staff and the Prime Minister with the entire apparatus of the Cabinet of Ministers and ministers. The Cabinet of Ministers as a collective body has shown its ineffectiveness when it is necessary to make decisions quickly and bear personal responsibility for them (curtains that contain collective irresponsibility should be sent to the landfill of history). If we turn our attention to the US Constitution, it’s easy to see another, simple and effective system of organization of executive power, headed by, of course, the President. It is considered appropriate in the process of constitutional reform in Ukraine to radically simplify the organization of executive power, through the subordination of all ministers directly to the President (by canceling the post of Prime Minister), and the Cabinet of Ministers to unite with the apparatus of the President, significantly reducing the staff of officials.

An important problem of the present constitutional process is the improvement of the activities of local self-government bodies. According to the proposals on changes to the wording of Article 118 of the Constitution of Ukraine, proposed by the draft law “On amendments to the Constitution of Ukraine concerning the decentralization of power”, the executive power in the districts and regions is exercised by the prefects appointed by the President of Ukraine. Prefects should be replaced by heads of local state administrations, including so-called governors. The Prefect becomes not so much a “governor” as it will fulfill the functions of prosecutor supervision over observance of laws by local

authorities. But will the prefect always be able to achieve legitimacy on the ground, and often to overcome the opposition of local officials, being outside the law enforcement system? Under the requirements of the law prefect can become a kind of "Don Quixote". It will be difficult for him to put the system in executive power in place for such an "asymmetry" of his competence. This is a problem of power imbalance.

The legislative body of Ukraine is the Verkhovna Rada, which should work more qualitatively and not create a situation of permanent reforms. The name of our legislative body should not emphasize its "supremacy", it would be more appropriate for the Ukrainian parliament to name "Parliament", in the structure of which there are two chambers: the upper chamber – the "Sejm", and the lower chamber – "Veche" (people's assemblies). A constructive update of the legislature should establish a general constitutional rule: a citizen may be a member of the parliament for no more than two consecutive terms. Only those who filed a declaration of their profits and their wealth in general should be allowed to be enlisted, and confirmed that most of his property is in Ukraine, is invested in Ukraine.

Elections to parliament should take place in such a way that the composition of the parliament does not change at once in full, and is renewed every two years by one third (deterrence from radical changes and upheavals), therefore, it is more appropriate to have a bicameral legislative body.

The judiciary should be as independent of the others. The current system of appointment and dismissal of judges does not ensure such an approach. This applies both to courts of general jurisdiction and the Constitutional Court of Ukraine. It would be desirable to return to the election of judges by the people.

The renaissance of the jury should take place in the light of its classical model, which was chosen by England, the United States, Russia and other countries, which showed their merits during the 1864 Statute of Criminal Procedure. In a jury trial, the question of guilty (this issue is decided by the jury in the verdict) should be separated from the issue of punishment (this issue is decided by the judge in the sentence). This judicial power is divided into two mutually controlling parts, which limits the possibilities of abuse, corruption and pressure on the judiciary, strengthens the principle of impartiality and independence of the court and reduces the risk of court errors.

At the same time, the work of peace judges should be restored. Peace judges are a democratically elected judicial body, whose simplicity has provided procedural economy, and its work should deepen the implementation of the idea of humanism in the judiciary.

The state is responsible to the people for their activities, it is so defined in Article 3 of the Constitution of Ukraine. An important form of the implementation of this idea was the Law of Ukraine "On the Procedure for Compensation of Damage Inflicted on the Citizen by Unlawful Acts of Inquiry, Pre-trial Investigation, Prosecutor's Office and Court". Meanwhile, a separate settlement of the procedure for compensation for damage caused to a citizen by unlawful actions of officials of executive authorities and local self-government is needed. Based on the above norms of the Constitution of Ukraine, it is necessary to develop and adopt a systemic legislative act – the Code of Rehabilitation of victims of illegal actions or inaction of the authorities.

At the same time, with the emergence of Ukraine as an independent state, with an increasing separation from the totalitarian past, with the new winds of revolution of dignity, we must take care of the dignity of several lost generations of the past and of the prospect of future generations. Mykola Berdyaev rightly wrote: "The state does not exist to transform the earthly life into paradise, but to prevent it from becoming finally into hell".

One of the important problems is to ensure the inevitability of the responsibility of those who organized and carried out mass political repressions and terror against the Ukrainian population. It would seem appropriate to add section XX of the Criminal Code of Ukraine to art. 448 "Political repressions and terror".

To ensure the human rights, it is expedient to introduce in Ukraine a separate National Human Rights Court, whose jurisdiction would include consideration of actions of a person against the organs of state power of Ukraine and their officials. In our opinion, the creation of such a judicial body can improve the implementation of the institution of State responsibility to a person, promote the strengthening of the rule of law in the activities of state authorities.

The National Human Rights Court should be set up in Ukraine based on maximum independence of judges from the authorities. Consequently, the appointment of judges to positions of any branch of government should not be affected. Therefore, probably, the election of judges will be justifiable by all national elections.

Along with the introduction of amendments and additions to the Constitution of Ukraine, a separate Law of Ukraine "On the National Court of Human Rights" should be adopted. In our opinion, the creation of such a judicial body can improve the implementation of the institution of State responsibility to a person, promote the strengthening of the rule of law in the activities of state authorities.

It is necessary to preserve and multiply the realization of the fundamental principle of a state governed by the rule of law – when adopting new laws, it is not allowed to narrow the existing human rights and freedoms as a guarantee of non-return in a sad past.

The strategic goal of Ukraine is building a social legal State. If the goal is to develop social legal State then the strategy must include the formation of the principles of law, the creation of institutions of checks and balances against the retreat from the goal.

Conclusions and further researcher directions. The adoption of the Constitution of the State through the national referendum is a legitimate and effective way to harmonize the legislative power in general and in particular. While the Basic Law of the State, gets its jurisdiction directly from the people and becomes a higher power, and the authorities are no longer able to change it on your own. The authorities should not be "Supreme", and serve as the law and ensure the rule of law, the person and the citizen.

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