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ABSTRACT

The article deals with the study of the legal issues of the formation and consolidation of the right to good governance in regulatory legal acts. Apart from the fact that Article 41 of the Charter of Fundamental Rights of the European Union contains, to a certain extent, an authoritative definition of the right to good administration, it is not new.

The scientific novelty of the article is directly related to the above, including the further development of the national legislation of the Republic of Azerbaijan. Good governance is defined (although not exhaustively) by paragraphs 2-4 of Article 41 as follows: the right to be heard before taking any individual measure that affects a party; the right of every person to have access to his file, taking into account the legitimate interests of confidentiality and professional and business secrecy; the obligation of the body to give grounds for making decisions in relation to a particular person. The results of the article can be used in future scientific research, including in the further development of the international and national normative-legal foundations of good governance.

Keywords: *human rights, right to good administration, European Union Charter of Fundamental Rights, Council of Europe Resolutions, European Ombudsman, European Court of Human Rights.*

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THE CONSTITUTION OF UKRAINE AS THE MOST IMPORTANT LEGAL GUARANTEE OF SOVEREIGNTY AND TERRITORIAL INTEGRITY OF THE NATION

Ігор Сердюк. КОНСТИТУЦІЯ УКРАЇНИ ЯК НАЙВАЖЛИВІША ЮРИДИЧНА ГАРАНТІЯ СУВЕРЕНІТЕТУ ТА ТЕРИТОРІАЛЬНОЇ ЦІЛІСНОСТІ ДЕРЖАВИ. При підготовці цієї статті автор визначив за мету з'ясувати роль Основного Закону Української держави як важливої юридичної гарантії законності і правопорядку, у забезпеченні її суверенітету та територіальної цілісності. Під юридичними гарантіями законності в юридичній науковій літературі розуміють передбачені законодавством спеціальні засоби впровадження, охорони і, в разі порушення, відновлення законності. Збройна агресія російської федерації проти України актуалізувала проблему захисту суверенітету та територіальної цілісності нашої держави не лише у

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практичній, але й науково правовій площині. Одним із важливих аспектів цієї проблеми є ефективність юридичних гарантій законності і правопорядку, з-поміж яких особливо важливе значення має Конституція України.

Конституція України, як документ установчого характеру, не лише юридично підтверджує сам факт існування України як суверенної, незалежної, демократичної, соціальної і правової держави (Ст. 1), територія якої в межах існуючого кордону є цілісною і недоторканою (Ч. 2 Ст. 2), але й засновує найважливіші державні інститути, на які покладаються юридичні обов'язки із забезпечення її суверенітету та територіальної цілісності (Розділи IV-VI), визначає принципи їх діяльності (Розділ I), а також наділяє ці інститути необхідними державно-владними повноваженнями, включно з правом застосування сили (примусу).

Здійснений автором аналіз норм Конституції України стосовно предмета дослідження свідчить про її винятково важливу роль у забезпеченні суверенітету та територіальної цілісності держави, адже саме цей юридичний документ як юридична гарантія законності і правопорядку не просто легалізує, але й легітимізує необхідні, хоча й подеколи непопулярні, юридично значущі дії різних державних і соціальних інститутів.

Ключові слова: Конституція України (Основний Закон Української держави), юридичні гарантії законності і правопорядку, захист суверенітету та територіальної цілісності України, Збройні Сили України, Верховна Рада України, Президент України.

Relevance of the study. The armed aggression of the Russian Federation against Ukraine actualized the problem of protecting the sovereignty and territorial integrity of our state not only in the practical, but also in the scientific and legal plane. One of the important aspects of this problem is the effectiveness of legal guarantees of law and order, among which the Constitution of Ukraine is of particular importance.

Recent publications review. The concept of legal guarantees of legality and law and order, their types and significance for legal practice are traditional issues that are comprehensively considered within the scope of scientific monographs, dissertations, articles, textbooks and training manuals on the theory of the state and law. In the focus of attention of representatives of the doctrine of constitutional law are the issues of the concept of the constitution, its legal properties, varieties and importance in ensuring the constitutional human rights and freedoms person. Such domestic scholars as S. Bobrovnyk [1], V. Vasetskyi [2], M. Kelman, O. Murashin [3], A. Kolodiy [4], O. Kurakin [6], P. Rabinovych [7], L. Serdiuk [8], O. Skrypniuk [9], O. Sovhyria, N. Shuklina [10], Yu. Todyka [11] etc. have made a significant contribution to the study of the outlined problems. At the same time, in their writings, lawyers did not focus on the Constitution of Ukraine as the most important legal guarantee of the sovereignty and territorial integrity of our state.

The research paper's objective is to clarify the role of the Basic Law of the Ukrainian state as an important legal guarantee of legality and law and order in ensuring its sovereignty and territorial integrity.

To achieve the declared goal, we will use the cognitive capabilities of the hermeneutic methodological approach and the special legal method of cognition, which will allow us to reveal the content of the provisions of the Constitution of Ukraine, the need to involve them for scientific analysis is determined by the subject of the study, its tasks and the author's creative intention.

From a methodological point of view, the aspect of knowing the constitution is also important. The latter will be considered by us as the most important legal guarantee of law and order. Such significance of the Basic Law of the state is due to its contractual nature. Despite the official name, this legal document contains legal norms that express the joint, agreed expression of the will of the main beneficiaries of the social contract – citizens of Ukraine of all nationalities, who are united in the social community – the Ukrainian people [1].

Discussion. It should be noted that in the theory of law, legal guarantees of legality are understood as special means of implementation, protection and, in case of violation, restoration of legality provided by legislation [2, p. 177].

The analysis of the above judgment of P. Rabinovych on the legal guarantees of legality in the aspect of the Constitution of Ukraine shows that the latter, as a document of a constituent nature, not only legally confirms the very fact of the existence of Ukraine as a sovereign, independent, democratic, social and legal state (Article 1), the territory of which within the existing border is integral and inviolable (part 2 of article 2), but also establishes the most important state institutions, which are entrusted with legal obligations to ensure its sovereignty and territorial integrity (Chapters IV-VI), defines the principles their activities (Chapter I), and also endows these institutions with the necessary state powers, including the right to use force

(coercion).

In support of this thesis, we cite specific constitutional and legal prescriptions:

Protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security, shall be the most important function of the State and a matter of concern for all the Ukrainian people (Part 1 of Art. 17).

The defence of Ukraine and protection of its sovereignty, territorial integrity and inviolability shall be entrusted to the Armed Forces of Ukraine (Part 2 of Art. 17).

Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be determined by law (Part 3 of Art. 17).

The Armed Forces of Ukraine and other military formations shall not be used by anyone to restrict the rights and freedoms of citizens or with the intent to overthrow the constitutional order, subvert the public authorities or obstruct their activity (Part 4 of Art. 17).

The State shall ensure social protection of citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations as well as members of their families (Part 5 of Art. 17).

Establishment and operation of any armed formations not envisaged by law are prohibited in the territory of Ukraine (Part 6 of Art. 17).

The location of foreign military bases in the territory of Ukraine shall not be permitted (Part 7 of Art. 17).

No one shall be obliged to execute directions or orders that are manifestly criminal. For the issue or execution of a manifestly criminal ruling or order, legal liability shall arise (Part 1-2 of Art. 60).

Under the conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions. The rights and freedoms stipulated in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of this Constitution shall not be restricted (Part 2 of Art. 64).

Alterations to the territory of Ukraine shall be resolved exclusively by the All-Ukrainian referendum (Art. 73).

Prior to assuming office, people's deputies of Ukraine shall take the following oath before the Verkhovna Rada of Ukraine: "I swear allegiance to Ukraine. I commit myself with all my deeds to protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and for the welfare of the Ukrainian people. I swear to abide by the Constitution of Ukraine and the laws of Ukraine, to discharge my duties in the interests of all fellow-citizens" (Part 1 of Art. 79).

The Verkhovna Rada of Ukraine shall have the following powers:

– to declare war, upon the recommendation made by the President of Ukraine, and make peace, approve a decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine (clause 9 of Part 1 of Art. 85);

– to approve the general structure, and number of staff of the Security Service of Ukraine, the Armed Forces of Ukraine, and other military formations established in accordance with the laws of Ukraine, as well as of the Ministry of Interior of Ukraine, and specification of the functions of the same (clause 22 of Part 1 of Art. 85);

– to approve decisions on military assistance to other states, on dispatching the Ukrainian Armed Forces units to another states or on admitting units of armed forces of other states to the territory of Ukraine (clause 23 of Part 1 of Art. 85);

– to approve, within a two day period from the date of submission by the President of Ukraine of the decrees on introduction of martial law or the state of emergency in Ukraine or in its particular areas, on total or partial mobilisation, and on declaring particular areas as zones of ecological emergency situations (clause 31 of Part 1 of Art. 85);

– to approve decisions on military assistance to other states, on dispatching the Ukrainian Armed Forces units to another states or on admitting units of armed forces of other states to the territory of Ukraine (clause 23 of Part 1 of Art. 85).

13. They are determined exclusively by the laws of Ukraine:

– the fundamentals of national security, the formation of the Armed Forces of Ukraine and ensuring public order (clause 17 of Part 1 of Art. 92);

– the legal regime of the state border (clause 18 of Part 1 of Art. 92).

– the legal regime of martial law and state of emergency, zones

of ecological emergency situations (clause 19 of Part 1 of Art. 92).

14. The following matters shall be established exclusively by laws of Ukraine:

– a procedure for dispatching units of the Armed Forces of Ukraine to other states; and a procedure for admitting and the terms for stationing units of armed forces of other states on the territory of Ukraine (clause 2 of Part 2 of Art. 92).

15. The President of Ukraine shall be the guarantor of the state sovereignty and territorial integrity of Ukraine, the observance of the Constitution of Ukraine, human and citizen rights and freedoms. The President of Ukraine shall be the guarantor of the implementation of the strategic course of the State to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization (Part 2-3 of Art. 102).

16. The President of Ukraine shall take the following oath:

"I, (name and surname), elected by the will of the people as the President of Ukraine, assuming this high office, do solemnly swear allegiance to Ukraine. I pledge with all my undertakings to protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and the welfare of the Ukrainian people, to protect the rights and freedoms of citizens, to abide by the Constitution of Ukraine and laws of Ukraine, to exercise my duties in the interests of all compatriots, and to enhance the prestige of Ukraine in the world" (Part 3 of Art. 104).

17. The President of Ukraine shall:

– ensure the independence, national security, and legal succession of the State (clause 1 of Part 1 of Art. 106);

– represent the State in international relations, administer the foreign political activity of the State, conduct negotiations and conclude international treaties (clause 3 of Part 1 of Art. 106);

– adopt decisions on the recognition of foreign states (clause 4 of Part 1 of Art. 106);

– appoint and dismiss heads of diplomatic missions of Ukraine to other states and to international organisations; accept credentials and letters of recall of diplomatic representatives of foreign states (clause 5 of Part 1 of Art. 106);

– submit the proposal to the Verkhovna Rada of Ukraine regarding the appointment of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine (clause 10 of Part 1 of Art. 106);

– submit to the Verkhovna Rada of Ukraine the proposal regarding appointment or dismissal of the Head of the Security Service of Ukraine (clause 14 of Part 1 of Art. 106);

– be the Commander-in-Chief of the Armed Forces of Ukraine; appoint and dismiss the high command of the Armed Forces of Ukraine and other military formations; administer the national security and defence of the State (clause 17 of Part 1 of Art. 106);

– be the Head of the National Security and Defence Council of Ukraine (clause 18 of Part 1 of Art. 106);

– submit to the Verkhovna Rada of Ukraine a declaration of a state of war, and adopt a decision on the use of the Armed Forces and other military formations established in compliance with laws of Ukraine in the event of armed aggression against Ukraine (clause 19 of Part 1 of Art. 106);

– adopt, in accordance with law, a decision on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular territories, in the event of a threat of aggression, or danger to the independence of Ukraine (clause 20 of Part 1 of Art. 106);

– confer high military, high diplomatic, and other high special ranks and class orders (clause 24 of Part 1 of Art. 106);

– confer state awards; establish presidential distinctions and confer them (clause 25 of Part 1 of Art. 106);

18. The President of Ukraine shall issue decrees and directives mandatory for the execution on the territory of Ukraine on the basis and in pursuance of the Constitution and laws of Ukraine (Part 3 of Art. 106);

19. The National Security and Defence Council of Ukraine shall co-ordinate and control the activity of executive power bodies in the area of national security and defence.

The President of Ukraine shall be the Head of the National Security and Defence Council of Ukraine.

The President of Ukraine shall form the personal membership of the National Security and Defence Council of Ukraine.

The Prime Minister of Ukraine, the Minister of Defence of Ukraine, the Head of the Security Service of Ukraine, the Minister of Internal Affairs of Ukraine, and the Minister of

Foreign Affairs of Ukraine, shall be ex officio members of the National Security and Defence Council of Ukraine.

The Chairman of the Verkhovna Rada of Ukraine may participate in the meetings of the National Security and Defence Council of Ukraine.

Decisions of the National Security and Defence Council of Ukraine shall be put into effect by decrees of the President of Ukraine (Parts 2-7 of Art. 107).

20. The Cabinet of Ministers of Ukraine shall:

– ensure the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, and the execution of the Constitution, laws of Ukraine, and acts of the President of Ukraine (clause 1 of Art. 116);

– ensures the implementation of the state's strategic course towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization (clause 1-1 of Art. 116);

– take measures to ensure human and citizen rights and freedoms (clause 2 of Art. 116);

– take measures to ensure the defence potential and national security of Ukraine, public order, and fight against crime (clause 7 of Art. 116).

21. Ukraine can recognize the jurisdiction of the International Criminal Court under the conditions defined by the Rome Statute of the International Criminal Court (Part 6 of Art. 124).

22. Article 157. The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizen rights and freedoms, or if they are aimed at the liquidation of the independence or violation of the territorial integrity of Ukraine.

The Constitution of Ukraine shall not be amended under the conditions of martial law or a state of emergency (Parts 1-2 of Art. 157).

23. A draft law on making amendments to the Constitution of Ukraine shall be considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine on the conformity of such draft law with the requirements of Articles 157 and 158 of this Constitution (Art. 159).

Conclusions. The analysis of the above norms of the Constitution of Ukraine shows its exceptionally important role in ensuring the sovereignty and territorial integrity of the state, because this legal document, as a legal guarantee of legality and law and order, not only legalizes, but also legitimizes the necessary, albeit sometimes unpopular, legally significant actions of various state and social institutions.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

When preparing this article, the author set the goal of clarifying the role of the Basic Law of the Ukrainian State, as an important legal guarantee of legality and law and order, in ensuring its sovereignty and territorial integrity. The author's analysis of the norms of the Constitution of Ukraine, which touch on the subject of the study, proved the extremely important role of the Basic Law of the Ukrainian state in ensuring its sovereignty and territorial integrity, because this legal document, as a legal guarantee of legality and law and order, not only legalizes, but also legitimizes the necessary, albeit sometimes unpopular, legally significant actions of various state and social institutions.

Keywords: *Constitution of Ukraine (Basic Law of the Ukrainian State), legal guarantees of law and order, protection of sovereignty and territorial integrity of Ukraine, Armed Forces of Ukraine, Verkhovna Rada of Ukraine, President of Ukraine.*