CHAPTER 1. HISTORICAL AND LEGAL CHARACTERISTICS OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE

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1.1. Formation and consolidation of the institution of human rights and freedoms in Ukraine (VI-XV centuries)

A complete study of the legal nature of human rights and freedoms is impossible without understanding the historical retrospective of their development. Human rights and freedoms are a complex, rich phenomenon. At different epochs, the problem of human rights, regulated by politics and law, has also taken on a religious, ethical and philosophical significance. In the course of affirming human rights and freedoms, humanity underwent a complex and long process of gradual interdiction of state power and expansion of the principle of equality of rights to more and more people and the relations between them.

Often the struggle for human rights, for new and new degrees of freedom became a catalyst for large-scale changes in the socio-political life of this or other countries, led to a new understanding of the role of people in their relations with society and the state.

Rights and freedoms of people and citizen in Ukraine – the process of rights arising in certain forms equal in size and scope according to the level of social life at a particular stage of the historical development of Ukraine.

The phenomenon, which later began to be called human rights, has its origins in the earliest times of human history. It should be noted that it was on the Ukrainian land that the brightest example of antique democracy was created – the oath of a citizen of Chersonesus, and later in the union of the Scandinavian tribes the original was born, The original and effective for

those times, political and social order with elements of democracy – the first paradigms of people's ownership and self-government. The Byzantine historian of the second half of the 6th century. Procopius of Caesarea wrote that "these tribes, the Slovene and Antio-Roman, are not governed by a single person, but have been living under the rule of the people for a long time, and as a result they always do well and not do well together"[1].

We can thus draw an analogy with the ancient Greeks, who, in order to prevent usurpation of power and the coming of tyranny, introduced the institutions of power (magistracies in ancient Greece), The latter were collegial power organizations composed of at least two or more persons, thus implementing the mechanism of deconcentration of power. Let us note that the ancient Greeks also knew periods of dynastic rule, but it happened only during critical periods and, as a rule, lasted for a limited period. Also the ancient Hellenes were of the opinion that only barbarians could acknowledge unrestricted power over themselves – a civilized person acknowledges only the decision of a collegial body.

Ukrainian terminology of human rights takes its roots in the Russian Pravda, international treaties and other legal acts of the "Kievan Rus'. Thus, the treaty between Byzantium and Russia of 912 enshrined the right of a person accused of a crime to have their case examined by the court: "The crime must be presented by evidence in such a way that the judges have faith in these proofs"[2].

During the Kiev Rus' period (IX-XIII centuries), which due to the low historical circumstances did not know the slave system, the unhuman treatment of the individual did not take place in the Ukrainian lands, although there were certainly some notions about the servants and the people.

The transition from the first communal order to feudalism and the establishment of Kievan Rus'. The transition from the first communal order to feudalism, the establishment of the Kievan Rus' and later on its place the Kievan, Chernigiv, Galicia-Volinsk and other independent principalities did not lead to this swagger of the rulers, the violation of human rights and legal negligence, which was attributed to the majority of European feudal

[1] Kolesnykova V. Osnovni etapy rozvytku prav liudyny. *Aktualni problemy mizhnarodnykh vidnosyn*. Vypusk 83 (Chastyna II), 2009. S. 152–155.

[2] Matskevych M.M. Heneza prav liudyny: pravovyi ta filosofskyi aspekt. *Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav*. 2014. Vypusk 4. S. 54–65.

powers. For example, in the Kiev Rus', although there was a difference in social status between the free, free and non-free people, the state never legally formalized the groups of the population.

The nobility had access to the so-called "people" – representatives of the lower strata of the population, any free person (even a discharged slave) could join the druzhiny, and sometimes even the princes were found among the peasants. The military volunteers, who, in essence, acquired slave status, were often "planted" on the land and converted into dependent villagers. Slaves could buy themselves out and start a family. If one of the members of a mate was free, then his status did not change after the whoremongering. The children born in this family were also free people. Our forefathers were distinguished by a remarkable tolerance, as evidenced, for example, by the norms of the Russo-Byzantine treaties in 912, 945, 971, in which the treaty parties seal the agreement by oath. The Greeks swear by the Church of St. Elijah, and the un-Christian Rus – by Perun[3].

During the period of the Kiev Rus' (IX-XIII centuries), which due to the change of low historical conditions did not know the slave system, the non-human attitude to the person did not occur in the Ukrainian lands, although there were certainly some insults about the serfs and the people. The transition from the first communal order to feudalism, the establishment of the Kievan Rus' and later on its place the Kievan, Chernigiv, Galicia-Volinsk and other independent principalities did not lead to this swagger of the rulers, the violation of human rights and legal negligence, which was attributed to the majority of European feudal powers. For example, in the Kiev Rus', although there was a difference in social status between the free, free and non-free people, the state never legally formalized the groups of the population. Any group of the population was not closed, i.e. the transition from one group to another was possible[4].

The nobility had access to the so-called «people» – representatives of the lower strata of the population, any free person (even a discharged slave) could join the druzhiny, and sometimes even the princes were found among the peasants. The military volunteers, who, in essence,

[3] Antonovych M. Ukraina v mizhnarodnii systemi zakhystu prav liudyny. Kyiv: Vydavnychyi dim "KM Academia. 2000. 262 s.

[4] Huz A.M. Istoriia derzhavy i prava Ukrainy. Dzherela prava periodu Kyivskoi Rusi ; upor. i nauk. komentari A.M. Huz. Kyiv : KNT, 2007. 72 s.

acquired slave status, were often «planted» on the land and converted into dependent villagers. Slaves could buy themselves out and start a family. If one of the members of a mate was free, then his status did not change after the whoremongering. The children born in this family were also free people. Our forefathers were distinguished by a remarkable tolerance, as evidenced, for example, by the norms of the Russo-Byzantine treaties in 912, 945, 971, in which the treaty parties seal the agreement by oath. The Greeks swear by the Church of St. Elijah, and the un-Christian Rus – by Perun.

Old customary law – the law of Russia – even though it legalized the feudal rule, but at the same time limited it, creating certain legal safeguards for the lower classes of the population, It consolidated the post-war surrender of the barbaric principles of curved rent and talon («an eye for an eye»), interfered with the freedom and regulated the everyday life of the population of the Kievan Rus'. A sign of real democracy were «rows» – agreements made by the inhabitants with their princes. The main challenge in the treaty to the prince was «not to displease the people». If the prince did not fulfill the duties he had undertaken, the people could remove him from the princely throne at a meeting. Thus, in 1067. The Kiev council expelled Prince Ilzslav from the princely throne, and the Chernigiv council of 1078 – Prince Vsevolod – Prince Vsevolod.

The legal protection of non-torture of private life dates back to the appearance of «Ruskoi Pravda», the most ancient memory of Slovenian law, which is a collection of norms of customary law and princely charters, made in the XI-XII centuries[5].

For example, if «a man takes a man away from himself or to himself, he has to pay 3 hryvnias, if the victim presents two witnesses, but if the victim is a Viking or a Kolbyag, he has to swear» (article 10 KP) As a compensation the payment of 3 hryvnias and payment to a doctor for services was foreseen. «If someone has struck someone with a cane, a rod, a pillar, a bowl (kelikh), a horn or a sword, he must pay 12 hryvnias» (article 3 of KP)[6].

[5] Holovko, O.M. Pravo Kyivskoi Rusi v doslidzhenniakh vchenykh universytetiv na terenakh Ukrainy u XIX – na pochatku XX st. : monohrafiia. Kharkiv : Konstanta, 2018. 472 s.

[6] Pravda Ruska Yaroslava Mudroho: pochatok zakonodavstva Kyivskoi Rusi : Navchalnyi posibnyk. Kharkiv : Pravo, 2014. 344 s.

he list of the listed objects that could be used to inflict a blow indicates that the law did not impose a degree of danger to the health of the weapon that was used to inflict the beating. However, it is not so much the impact that is important as the image it sets off. That is why a retaliatory strike, i.e. a pomsta, should follow immediately after the image. In the case if the person was not able to be punished immediately due to this or other reasons, the person who was punished was subjected to a fine in the same amount of 12 hryvnias. The size of the penalty also indicates that the strikes were considered as figurative.

Investigators of the Russian Pravda explain these provisions by the fact that these objects do not belong to the military, and therefore the blows are perceived by them as a ganubni, more figurative than blows in combat, so that they demonstrate the utmost contempt for the victim[7].

It seems that the legislator gave such actions an intrinsic figurative meaning regardless of their consequences. One of the ways in which the image was applied was by whipping the hair and beard, which in ancient times were used by many people as a symbol of honesty and manhood. «For the dislocated vus (to pay) 12 grivnas, and for the reaping of the beard 12 grivnas» (Art. 8 of the KP). A similar amount of penalty was stipulated by article 67 of the RP. At the same time, as is confirmed by some scholars, the beard tourniquet or the wus was particularly injurious to the victim[8].

Only the psychological image can explain the fact that a fine of 3 hryvnias was imposed for finger removal and a fine of 12 hryvnias was imposed for the removal of a nose. O.V. Sosnina notes that psychological motives prevail over physical violence in the assessment of evil deeds.

The analysis of the texts shows that the Russian Pravda was aware of atrocities against the person, her life and health, personal freedom, honesty and integrity, property rights, family and morality, as well as against the prince and the faith. Information about other kinds of evil deeds was already found in other, everyday and legislative records of the epoch. V.E. Loba and S.M. Malakhov are convinced that during the period of

[7] Motsia O. “Rus”, “Mala Rus”, Ukraina” v pisliamonoholski ta kozatski chasy. Kyiv : Naukova dumka, 2009. 320 s.

[8] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last access 25.02.2022)

developed communal life, honor already belonged to clearly defined understandings, though the term «dishonor» does not appear in Russian Pravda. The question of punishment for the image of not only words, but also – women and children also did not find an adequate representation[9].

Such state of the word can be explained by the fact that Ruska Pravda did not cover all legal phenomena of that time. As we know, the order of Ruskoi Pravda was the Statute of prince Yaroslav about church courts, which was a summary of decisions about crime and evil deeds. He enforced the protection of the honesty of girls and wives, established punishment of fathers for encouraging their children to enter into sexual relations. Cases of religious or moral and family nature, as reported by the sources, were considered on the basis of church legislation. Ruska Pravda took in itself only a certain totality of norms, which were used in practice, and which do not give a complete idea of the law in general, since the law in ancient and early Middle Ages Russia existed both in written and unwritten form.

Proceeding from the fact that the right of non-torture of one's life is a part of the right of people to non-torture of private life, we analyze the norms of the Russian Pravda in this aspect.

Proceeding from the fact that the right to insufficiency of one's dwelling is a part of people's right to insufficiency of private life, we analyze the norms of the Russian Pravda in this aspect. Thus, Article 17 of the CoC states: «If a peasant strikes a friend and flees to the mansion, and the lord does not want to give him up, he [the lord] may take him away after paying 12 hryvnia for him, and after that, if a peasant anywhere meets a man beaten by him, he may beat him»[10].

We should note that the norm about the servant who hit a man and stayed in his father's house, leads to a number of assumptions, including that «a man's house is sufficiently strong, and a man is sufficiently strong to reveal his servant, who, without a doubt, is looked for by an injured free man». That is, a peasant who has shown himself in his father's house cannot be excommunicated from there. Art. 65 of the RL followed the discussed article (Art. 17 of the KP) with certain amendments and additions.

[9] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1(26). S. 39–42.

[10] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

M.M. Karamzin paid attention to the fact that by penetrating into a dwelling with the purpose of committing theft, the guilty person infringes not only on someone else's property, but also on the right of a citizen to the dwelling in the broadest sense of the word. «Whoever steals the goods in the stable or in the house pays 3 hryvnia and 30 kuna to the treasury, and whoever steals the goods in the fields pays 60 kuna». The substantiation of the severity of the sanctions, he explains by the fact that the penetration into the dwelling was considered a grave crime as opposed to (theft) stealing, because «the offender disturbed the peace of the lord at that time»[11].

O.V. Sosnina believes that the right of a slave not to be discharged on demand of the persons who interrogate him is an indication that the dwelling is not inaccessible[12].

For the slave, the house of the man is a place of hiding, he is not torn in it. A slave can be killed for the image, but not in the landlord's house itself, but behind it. The statement that the landlord's house served as a shelter for his servants was «a single and, therefore, costly indication of the lack of dwellings in our ancient times».

The absence of responsibility for violation of the right to privacy can be explained by the fact that in everyday life and lifestyle the custom about the right to privacy of the home has developed, This custom did not demand at the legislative level the introduction of any restrictions and was not reflected in the journals that have come down to this day.

So, for people who lived in the times of the Kievan Rus, the very fact of illegal penetration into someone else's home, perhaps, meant an encroachment on both for themselves and for their sanctity. Therefore, despite the lack of direct sanctions in the Russian Pravda, the right of non-transgression of the dwelling was under criminal and legal protection[13].

It is noteworthy that a woman's honor had a privileged status. However, Russian Pravda did not classify hitting a woman (wife or maid) as a particularly grave crime, but her present memoirs of law – the treaty with the Germans of 1195 – stipulated such a crime. In the case of the

[11] Karamzyn N.M. Ystoryia hosudarstva Rossyiskoho: V 3-kh kn. Kn. 1. SPb.: Krystall, 2000. 704 s.

[12] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1(26). S. 40.

[13] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

first case, a fine for such an act was imposed, which was equivalent to a conviction for murder of an innocent person, and the same private guilt for the person concerned. The high fine at that time indicated only that the honor of the woman was highly valued. In the same Treaty the honor of the slave was protected by a separate norm, according to which for the «image» of the slave the criminal had to pay a grivna, or a higher amount. The mentioned Treaty contains a provision about the punishability of such actions against the integrity of a woman, which have nothing in common with crimes against health, namely: «Whoever takes the head cover from another woman, for that 6 hryvnias, for a waste» (article 8). In the later editions of the Church Statute of Yaroslav (article 25) the image of the word, including a woman, and the honor (unlike in the Russian Pravda) is estimated differently depending on the social status of the person treated. Article 30 of the Extended Edition of the Statute of Jaroslav according to the content of article 25 of the Short version of this document[14].

The image of a woman by using a swearing, as well as the image of action, is also punishable by a fine, depending on the social status of the victim. To call an important woman a woman of easy behavior was to severely punish not only her, but also her husband and the whole family. The article establishes liability for the image of another woman's friend by a word that is considered as disgusting[15].

Establishment of responsibility for the image of the word, according to V.O. Kluchevsky, «was the first experience of awakening in the baptized priest a sense of respect for the moral integrity of people». In the «Russian Pravda» of the enlarged edition the process of changing the legal status of a woman from equal with a man to a follower has been partially interrupted. Article 88 stated: «Whoever kills his wife is judged by the same court as the husband»[16].

In other words, in procedural law she was treated as a fully discharged person, who was not yet under the guardianship of a husband. At the same time, the same article establishes the amount of the fine for the murder of a woman. It is twice as low as the fine for the same crime against an

[14] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

[15] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk.* 2013. No 1(26). S. 40.

[16] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

innocent man. This norm is a clear indication of the fact that at this stage of historical development the right of women to equality with men was not considered.

In the church statute of Volodymyr the Great there is a rule for which the violence against the boyars' friends and daughters was punishable by fines in the amount of one to five hryvnia in gold, and for the others – up to five hryvnia in gold. This is also a strictly feudal norm, which reinforces the social nervousness of women of different statuses[17].

The existence of liability for infringement of family rights and morality, in particular, the abuse of children's rights by their parents, i.e. the refusal to agree to marry or the coercion to it, are indirectly related to the formation of the institution of individual rights and freedoms. Article 24 of the shortened Statute of Prince Yaroslav on church courts has a prohibition of parents under pain of church punishment to give a girl in marriage or to unmarry the youngster. Parents were held responsible if one of their children did something to themselves, that is, if they ended their lives by self-murder or if they tried to carry out such an intention. Article 33 of the Shortened version prohibited interfering with children's desire to marry or be married.

It appears that the right to independently choose a man or a woman is a manifestation of the realization of private life, which was partly reinforced in the norms of the time.

The enlarged version of the Statute repeats the norm of Article 24 of the Short version in a modified form. In this case, the ability of the fathers to give their daughter in exchange for force is converted into their obligation in case of their disapproval. According to Article 7, for violation of this duty the fathers were liable to public authorities. However, the change of this norm did not remove the responsibility of the fathers in the case of their daughter's self-harm as a result of such a crime.

As for the separation, the opinion of L. Podkoritovoy is interesting. Podkoritovoya, she voiced that the statutes of Volodymyr and Yaroslav testify that the princes entrusted the spiritual authorities judicial review of some family matters, but only for a limited range of issues, and the penalties were only profitable articles, necessary for the material support of

[17] Poliarush S.I. Oformlennia yurydychnoho statusu zhinky za shliubno-simeinym pravom Kyivskoi Rusi. *Naukovi zapysky. Seriia «Istorychni nauky».* Vypusk 13. S. 102–107.

the church. Penalties for cases of severing adulterous relations were for the benefit of the church, but there was no mention of church litigation[18].

Probably more likely, the norms of civil law were active here, because the replacement of civil law by Byzantine law was also interrupted by such a factor as the popular perception of the written norms. In the old customs, the initiators of breaking up a whoremonger could be both a man and a woman. Here they had equal status. The separation procedure itself consisted in notifying the parents and neighbors in the presence of the parents and neighbors of their intention to mutually agree and agree to sever the relationship. This meeting was used to resolve the issues of property[19].

It is more likely that the norms of civil law were applied here, because the replacement of civil law by Byzantine law was also interrupted by such a factor as people's perception of written norms. In the old customs, the initiators of breaking up a whoremonger could be both a man and a woman. Here they had equal status. The separation procedure itself consisted in notifying the parents and neighbors in the presence of the parents and neighbors of their intention to mutually agree and agree to sever the relationship. At this meeting the property issues were also resolved. The property (non-monetary property) was left to the woman, who returned to her father's family, and the property (non-monetary property) was left to the husband. The division of children also took place on the basis of a friend's agreement.

The domain court of the local feudal lord began to announce the separation. Considering all the above, we can make a conclusion about the dominant role of customary law in the regulation of intimate relations in the Kievan Rus'. And because of it the status of a woman in family legal relations was equal to the status of a man of the same status. Although in the Old Russian state in written norms the woman was given the same personal, property and procedural rights as the man, however, the mechanism of their protection was not developed, which in the long run led to the loss of the parity status of the woman and the man. The imposition of Byzantine law and church norms in the regulation of family relations was very strong, at first it affected mainly the feminine faithful of the population and in

[18] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

[19] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1 (26). S. 40.

the end it established the dependent status of women in the family and society[20].

It is important to note that the law of the Kievan Rus' was in force after the termination of its existence. Thus, «Ruska Pravda» preserved its legitimacy in the Galician-Volynsk state and even in the conditions of servitude of the Ukrainian lands by foreign enforcers. In Galicia and other Ukrainian territories which in the 14th century were part of the Polish kingdom, Ruska Pravda was lawful until 1434. In the Ukrainian lands which were the part of the Great Duchy of Lithuania «Russkaya Pravda» functioned till 1529 and the significant part of its norms in changed form were included into the structure of the Judicial Code of Kazimir IV Yagaylovych of 1468 and the Lithuanian statutes of 1529, 1566 and 1588[21].

Analysis of the Judicial Code of Kazimir Jahailovich, which is the first collection of laws of the Grand Duchy of Lithuania, which has reached our time, shows that its rules were focused primarily on the criminal-legal protection of property relations. In the context of our study of the formation of rights and freedoms on the territory of Ukraine, article 24 of the Judicial Code, which states: «And who will lead people or people unauthorized and will be caught by a person, that person will be sentenced to the scaffold; and if he composes a foul, then the court: as this sheet says, he will be judged by it», is worth attention.

In A. Andrushko's opinion, the systematic analysis of the considered norm and its general context allow us to consider the actions it prescribes more often as property crimes than as crimes against personal freedom of the person[22].

This is very close to the criminal law offences of the era of the Kievan Rus', which relate to the extortion of another person's servant or smerd. In contrast to the «Russian Truth», the Judicial Code of Kazimir Yagaylovych

[20] Podkorytova L. Protses rozirvannia shliubu v khrystyianskii Kyivskii Rusi. URL: www.ruthenia.info (last exess 25.02.2022).

[21] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

[22] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

for committing such an act provided for a more severe punishment – the death penalty by hanging.

1.2. The Rights and Freedoms of the People in Ukraine in the Era of the New Time (15th – early 20th centuries)

The next stage in the development of the legislation on the rights and freedoms of the people were the Lithuanian Statutes of 1529, 1566 and 1588. Thus, the First (Old) Lithuanian Statute protected the marriage of women («princesses, widows and maidens») by force; it guaranteed that «each of them, for the pleasure of her friends, is free to marry whom she pleases»[23].

Similar norms were also stipulated by the Statute of 1566. and the Statute of 1588. Whoever «without the will of his father and mother, uncles or other close parents, forcibly takes away from any place any of the above-mentioned women, and by such means he took them to the sloop,» and was subject to the strike, and one-third of his property was to be given as a dowry to the woman who had been forcibly taken by him.

Statute of Lithuania 1529 p. forbade Jews or Tatars to triumph over Christians in the Volga region. It is clear that this norm had a pronounced religious restriction, but it is still of interest for our study. It stipulated the obligation of warlords, elders and rulers to release a Christian from his freedom if they were informed that a Jew or Tatar had bought him or taken him into custody. The Statute at one time provided for a special compensation for the losses incurred in connection with such Jews or Tatars: If a landlord bought a Christian for himself, or if a serf was born of a bought wife, then such a serf, having reached the age of majority, had to live in the landlord's house for seven years, and after seven years he was to be let free. If a Jew or a Tatar took someone into custody for money, then the innocent person was to pay back the sum. In such situations, the representatives of other religions had no right to try Christians in involuntary servitude. Similar provisions were also contained in the Statute of 1566. and in the Statute of 1588. The Lithuanian statutes stipulated that «a civil person shall not be taken into penal servitude for any bad deed»,

[23] Kovalova S. Sudebnyk velykoho kniazia Kazymyra Yahailovycha 1468 r. : monohrafiia. Mykolaiv : Vydavnytstvo ChDU, 2009. 112 s.

but that the person who had suffered a loss was obliged to comply with the Statute of 1566[24].

An important provision is stipulated in Article 10, p. 11 of the Statute of 1529, in which it is stipulated that if a person sells a prisoner or his son to a captive through starvation, or sells himself to a captive through starvation, then such a contract shall not be valid. However, «if a man forces his innocent man to go through hunger or gives his innocent man to someone, so an innocent man shall be liable to the same penalty». Similar provisions were also contained in the subsequent editions of the Statute of 1588[25].

The Lithuanian statutes clearly distinguished between military people, whose rights were worthless, and non-military people, who could be sold or charged with other rights. Statute of 1529. stipulated that people were considered innocent for four reasons: First, those who have been in captivity for a long time, or who were born in captivity; second, those who have been taken captive from the enemy's land; third, those who have been condemned to the death penalty for committing a crime, by which this kind of punishment is replaced by captivity for the benefit of the injured party; their children, who are born afterwards, are also innocent; fourthly, those who had been being innocent, have knowingly armed themselves with an innocent man or woman; their children are also innocent.

In subsequent revisions of the Statute, the number of grounds for being a noncitizen has been reduced. Thus, while the Statute of 1566 no longer provided for the third of the reasons that the Statute of 1529 had chosen, the Statute of 1588 did not. In the same way, it was voted: «They cannot be citizens for any other reason than that they have been made prisoners». Other non-villagers acquired the status of fathers, i.e. they were close in legal status to the crypaks. At the same time, the Lithuanian statutes provided for the possibility of freedom for a non-citizen. Thus, in Art. 11 XI of the Statute of 1529. «If, at the time of famine, a person drove his innocent people out of the court, not being able to keep them in line, and they themselves were starved, then they would no longer be innocent, but would become innocent», it is stipulated in Article 11 of 1529.

[24] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. T. I : Statut Velykoho kniazivstva Lytovskoho 1529 r. Odesa : Yurydychna literatura, 2002. 230 s.

[25] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. Statut Velykoho kniazivstva Lytovskoho 1566 r. Odesa : Yurydychna literatura, 2003. 560 s.

Similar provisions are also contained in the next editions of Statute 12 of 1566 31 and Statute 1588[26].

The Lithuanian statutes also provided for liability for theft of a father-in-law or a servant, but the aforementioned offence was, as before, associated with the theft of property. The person guilty of the offence had to pay a fine and return the stolen property to the previous owner. In general, it can be concluded that, in comparison with the previous legislation, the Lithuanian statutes were an important step forward in the fight against crimes against the individual liberty of the people. At the time, the Statutes reflected the state of nervousness of the time, and the relevant provisions were placed in different sections, combined elements of substantive and procedural criminal law and were generally casuistic. Of particular interest for the study is the law of the Armenian communities, which during the centuries lived compactly in Lviv, Kam'yantsy-Podilsky, Stanislav, Snyatin, Berezhany, Yazlovtsy and other towns of Galicia and Podillya. Living abroad, the citizens were able to make the most of the opportunity to organize their own autonomous self-governing and judicial bodies[27].

To resolve different legal situations, the villages used their ancient law – the Judicature of Mkhitar Gosh, established in 1184-1519. The norms of the Livonian law were translated into Latin and confirmed by the Polish king Sigismund I Augustus as the Statute of the Livonian Communities. In the scientific literature this code was called «The Livonian Judicature of 1519». The Statute of the Lviv Communes regulated the legal relations among the communities of the Lviv communes of Galicia. For the sub-provincial villages in 1567. A specific statute was approved for the suburbs, which, however, in fact, repeated the text of the 1519 Vermensky Sudebnik. The main germ of these codes was the Judicature of Mkhitar Gosh. The said collection of laws provided for liability, in particular, for crimes against the individual freedom of the people. A special place in the Judicature is given to Article 24, which established the death penalty for the theft of Christians by the unbelievers. This norm appeared as a result of the widespread cases of theft of children for sale in the non-villainous markets of the West during

[26] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. Statut Velykoho kniazivstva Lytovskoho 1566 r. Odesa : Yurydychna literatura, 2003. 560 s.

[27] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. T. I : Statut Velykoho kniazivstva Lytovskoho 1529 r. Odesa : Yurydychna literatura, 2002. 230 s.

the Middle Ages. If the stealer of the child was a Christian by profession, the death penalty was commuted to imprisonment with the obligation to return the sold person to the fatherland. If this was not possible, the guilty person was imprisoned, but his eyes were blindfolded[28].

However, the norms of the Judicial Code did not prohibit slave trade, in which wimmen took an active part. This fact is known, for example, from the decree of King Vladislav III of 1444, which regulated the problems that arose during the trade of non-citizens, which the prisoners could buy on the Black Sea markets. In the past, Lviv was plagued by bouts of arbitrary expulsion of such non-citizens by representatives of other nations without the prisoners' consent, and the king forbade this. The document, however, stipulated that if a non-prisoner had a good faith desire to purify himself, he could be redeemed for the amount that the prisoner had spent at the time of his sale. As is well known, in the medieval and early modern periods, accusations of Jews being guilty of stealing and killing Christian children for ritual purposes were widespread. Accusations of Jews being guilty of such acts were nervously followed by trials. They were also reacted against at the highest state level. Thus, on 26 June 1566. The Grand Duke of Lithuania and the King of Poland Sigismund II Augustus issued a decree on the accusation of the Jew Nahim, who had stolen, in three days he was burned at the stove and then killed a Christian child in the small town of Rososz. However, in view of the fact that the accusation against Nahim was based on the testimony of a little girl and other strong evidence, the king found the Jew innocent of the crime against him[29].

The ideals of virtue, freedom and respect for human dignity also prevailed in the «Cossack Christian republic» – Zaporozhye Sichi, which was known in the years of the national-civil war of 1648-1654. They spread all over Ukraine and became a powerful instrument of national growth. On the territory occupied by the Cossacks an original system of social-political governance was created, which was based on the democratic

[28] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

[29] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka.* URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

principles of freedom of all administration, and on the independence of its «Cossack mass» as well. The legitimate result of the struggle of the Ukrainian people was not only the liberation from the foreign oppressors, but also a cardinal change in the legal status of the main mass of the population. The conditions were created for the restoration of national, religious and economic rights. The Cossack shtetl for a time was forced to abolish the cryptic right, the former feudal peasants became noble people, and the Ukrainian nobility and the Cossack upper class clung to the privileges and privileges of the «noble state». However, it soon became apparent that it was impossible to satisfy the interests of the landed upper class without returning to serfdom, and the Ukrainian peasants fell back into bondage.

Thus, for the first time it became possible to speak about the rights, freedoms and dignity of the people only in relation to certain religions of the Ukrainian population. After the Pereyaslavl Council, when the Ukrainian land under the Russian protectorate became an autonomous entity – Hetmanshchina, the idea of preserving «the ancient rights given by the Grand Dukes of Lithuania and the Polish kings» became popular. In all the Ukrainian-Moscow treaties (Bereznev Statutes of 1654, Pereyaslav Statutes of 1659, Baturin Statutes of 1663, Moscow Statutes of 1665, Gluhiv Statutes of 1669, Konotopsk Statutes of 1672, Pereyaslav Statutes of 1674, Kolomats'kyi Statutes of 1687, Reshetil'ivskyi Statutes of 1709, «Rishitel'nyi pts.» of 1728) it was stipulated that the Ukrainian Cossacks and the nobility shall retain their freedoms, rights and privileges, and certain status rights were guaranteed to the clergy and the townspeople[30].

In practice, this meant that the Hetman administration and the Cossack courts in Ukraine were not governed by Russian legislation, but by «Lesser-Russian rights», which meant the norms of the Lithuanian Statute, Magdeburg law and the acts of the Hetman authorities. These norms, in the opinion of contemporaries, sufficiently secured the economic interests of the Ukrainian Cossack-Slachia upper class, its constitutional rights and autonomist aspirations. In the part of Ukraine that had been under the influence of Poland or Turachchchina, they also wanted to preserve the «ancient rights» mentioned earlier.

[30] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

Thus, in the Gadyatsk Tractate of 1658. In the Gagiade of St. Ivan of Vygov with Poland, the freedom of the Cossacks «in councils, courts, and in the civil elections of their lords» was guaranteed, and the full equality of Orthodox and Catholics was specially strengthened. The Constitution of 1710, a treaty between the immigrant hetman Pilip Orlik and his brother-in-law, sanctioned by the Swedish King Charles XII, was of great importance as a source of the rights of the people in Ukraine. This document declares the idea of «rectification and restitution of their inferior rights and freedoms», and condemns the colonial hetmans who «usurped power, violating all natural law and sovereignty». In the text of the «Legal Regulations and Constitution on the Rights and Freedoms of the Zaporizhzhya Soldier» (the official name of the document), one can find the consolidation of the elements of the separation of powers between the Hetman, the General Council and the General Court, as well as of the principle of subjecting the rulers to the free will of the population. At the time of the return of Orlik to Ukraine, it was obliged to restore the rights of the Cossacks, to preserve the privileges of the towns, to ease the tax burden on the peasants, to grant state aid to widows, orphans and other socially unprotected sectors of the population. In this document there were also unacceptable, from the point of view of the contemporary statements, norms that strengthened the intolerance to religions other than the Orthodox one. In the end, however, the Constitution of Philip Orlik did not gain any real force, and therefore it has remained in history only as an original legal memory.

The development of the Cossack law can be seen as the development of the right of the people to individual will. It is quite obvious that the basis for the formation of the Cossack law was the law of conscience, which was attached to the life of the peasantry. Since the Zaporozhian people were soldiers, the norms of military law were manifested in the form of military campaigns (the holding of the Cossack council, the admission of new persons to the society, the organization of military campaigns).

Thus, for example, a new Cossack who joined the army, at the gathering of other Cossacks – his comrades-in-arms – was given a place of 3 arshires of length and 2 arshires of breadth by the curinsky otaman, who explained: «This is your home, and if you die, we will make a shorter

one»[31]. Zaporizhzhya had a new name, which was not very brutal in character, which implied a complete disregard for the world he was leaving. For the form of government, Zaporizhzhya is considered to be a democratic republic. The Cossack Council was the organ of direct democracy. It was not a representative body as in Western Europe. In the adoption of laws and the administration of affairs, only representatives of one state – the Kozaks – were directly involved. The Council was vested with all the legislative and administrative powers. It passed laws, made decisions on the most important issues of domestic and foreign policy, and controlled the activities of the governors. The council could be convened by the hetman, the metropolitan, and in military times – by simple goats and outsiders.

The sovereign power in Zaporizhzhya belonged to the Kosh, i.e. to those who were converted to the Cossack council. In total, there were 21 posadas, where several governors of the same name resided. For example, there were 38 courier otamans (for the number of couriers), 8 garmashiv (artillerymen), 20 clerks, 9 regimental scribes. In total, there were 120 command and administrative personnel in the government structures of Zaporizhzhya City. The military chiefs occupied the highest position in the administrative apparatus, and among them there was a military commander[32].

In contemporary terminology, he was the head of the Zaporizhzhya Republic, commander-in-chief of the armed forces and military commandant of Sichi. The Kosovian Ottomans, as well as the majority of the governors, stayed at the Kosovian Rada, were either dismissed from their posts or were occupied for the next term. The military commanders also included:

1. The military judge – another person in the Zaporizhzhya prison. He tried the Kozaks, recognized the chief of the artillery, and sometimes replaced the koshnyi otaman. The army scribe was in charge of the chancellery, he kept the lists on behalf of the whole Zaporizhzhya army.

2. The army observation officer supervised the order of the soldiers on the village, took care of the replenishment of the army's food supplies, organized the execution of court decisions, and kept track of the misdeeds committed both on the village and on the territory of the tents. In addition

[31] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

[32] Administratyvna vlada i sudochynstvo Zaporizkoi Sichi. URL: http://www.ukrreferat.com/index.php?referat=71878. (last exess 01.03.2022).

to the overcounted planted soldiers, the status of the army senior was also held by the kurinni otamans – the leaders of the army subdivisions, which were called kurens.

3. The middle lance of the military administration was occupied by army officials who helped the army elders to manage the Cossack army. Among them was Dovbush. He gathered the Cossacks to the council, was to be present during the execution of court orders, and organized the collection of tributes and trade duties. The army gunner commanded the Cossack artillery and was the commandant of the army prison. The army tlomach performed the duties of a commander. Kantarzei supervised the maintenance of the standard of peace and vagi in the whole territory of Zaporizhzhya.

4. The rest of the Cossack administration consisted of the marching and parachute elders. The head colonel commanded a military detachment, which was called a regiment. In addition to him, the regimental officers included a regimental sergeant major and a scribe[33].

As it was noted, the power of the palanquin elders extended to the family goatherds and representatives of other social faiths, who lived outside the borders of Sichi, in the villages and winter villages. The colonel was in charge of the palanquin and was assisted by other administrators. The colonel's duties included court functions up to the death penalty. As far as the court system and the judicial process are concerned, the number of court institutions in Zaporizhzhya was not clearly defined and legally regulated. Scholars consider the courts in Zaporizhzhya to have been pure, among which the court of first instance was the court of the palanquin or the court of the palanquin colonel. The jurisdiction of the court extended to the territory of the palanca, which was occupied by the colonel of the palanca, who was also the head of the court. Cases of misdemeanours were heard, for which minor punishments were imposed. On the shoulders of the palanquin court rested the main mass of civil cases. They acted collectively in the composition of a colonel, a colonel, a scribe. The members of the court were appointed for a term of three years. The Court of the Curia, or the Court of the Curia Otaman, was a court of second instance, which heard appeals from the palanquin court. It was heard by the Kurin Otaman, whose jurisdiction extended only to the Kozaks of one kuren. In the case

[33] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

of the caller's admissibility and the reply to different curens, the case was heard by the court of the otamans of both curens. The court of the military (general) judge heard important criminal cases in the first instance, either collegially or unilaterally. A conviction could be brought before the highest court, the court of the coroner.

The court of the koshovoy otaman – exercised jurisdiction on the whole territory of Zaporizhzhya. The terms of the court were not subject to reprimand. Kosovij pardoned and reviewed the sentence in order to reduce the sanctions. The Court of the Kozatsk Council is the supreme court of Zaporizhzhya. As a rule, it was assembled by the Kosovskiy or the punitive otaman to resolve high-profile cases. The verdict was made by voting or by voting the hats of all the Kozatsk Zagal, including those of the palanca Kozaks[34].

Manliness and youthfulness, generosity and selflessness, respect for old warriors and hospitality, simplicity and moderation, guilt and fear of death, military valour and honesty were valued at the Feast. The following were judged: boastfulness, lying, drunkenness on the march, greed, sloth, malice, dishonesty. From this system of values all legal norms were generated. The main weight of the legal influence of the court of law fell on carny and malicious crimes. However, the organic relationship between law and morality led to the total fetishization of legal norms. For any other misdeed, for any other crime, for any attempt on someone else's property, the death penalty was imposed, regardless of the authority and past merits of the accused. The alignment of jurisdiction with the moral system of values led to the fact that law in the conditions of the Church existed as a self-sufficient and self-governing phenomenon[35].

The peculiarities of the social regulation of social relations in the Cossack society had their origins in the desire of people who had gained freedom to escape from the unwillingness, the hated power of the lords and rulers. This is manifested in the peculiar structure of communal power in the Cossack environment. Kozaks were united in communities and all important issues were discussed and solved in councils. Here they robbed Kozatsk

[34] Atamanova N.V. Zabezpechennia pravovoho poriadku v Ukraini instytutsiiamy Zaporizkoho kozatstva. *Aktualni problemy derzhavy i prava : zb. nauk. prats.* 2011. Vyp. 58. S. 131–135.

[35] Yevtushenko O.N. Polityko-pravovi zasady upravlinnia Zaporizkoi Sichi. *Naukovi pratsi: naukovo-metodychnyi zhurnal.* Mykolaiv : Vyd-vo MDHU im. P. Mohyly, 2006. Vyp. 41 : Politychni nauky. T. 54. S. 117–121.

elders – otamans, osavuls, judges, heard the testimonies of rebellious people. The town council had the opportunity to influence directly the functioning of these powerful institutions of the Cossack society. The municipality was also the subject of the monetary-normative creation of regulations, which were gradually formed into the system of civil law of the Kozak people. The Kozat community strictly upheld the observance of the unwritten rules of Kozat honour. As we know, there were legends about the Cossack honesty: any river, flooded in Zaporizhzhya, was left unoccupied in the same place, where its owner could take it away anytime, even after a year. It was considered by the Zaporozhian people to make a profit on the account of the community as a bad thing, which was punished as a misdemeanour. Stealing from a comrade was considered the worst crime after the death of one's wife[36].

It is characteristic that in the Ukrainian villages of Odyshchina, which were established as a result of Cossack settlements already after the destruction of Zaporizhzhya by the tsar, the tradition of respect for property and other people's property was preserved even at the time when the communist Soviet government made a «historic» attack on private property. The Cossack order of values defined the Cossack legal ideal, which played a significant role in the development of Ukrainian society: It became a factor in the formation of the legal life not only of Zaporizhzhya, but also of all Ukrainian lands, and with all the obviousness it was materialized during the rebellion, when the Cossack orders were introduced in the liberated territory[37].

An important factor of the legal order of the Ukrainian state of the Kozatsk era was the establishment of a self-contained legal system, which was the constitutional-normative basis for the formation and maintenance of the legal order in the Ukrainian society of that time. The dominant system-creating factor of the legal order was the Cossack law – the totality of legal rules, which were established in the sphere of the Cossacks. The importance of this rule is reinforced by the fact that soon after the annexation of Ukraine to Russia the Tsar's charter of 25 March 1654. It gave the military

[36] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

[37] Makarenko O.V. Zvychaieve pravo Zaporizkoi Sichi. URL: http://intkonf.org/makarenko-ovz-vichaeve-pravo-zaporozkoyi-sichi/ (last exess 01.03.2022).

of Zaporizhzhya the right to sue «their elders according to their ancient rights», i.e. on the basis of the law of conjugation. And the basis of civil law was established in the 15th – the middle of the 17th centuries. At the same time, the law of the goat was particularly popular among Ukrainian peasants who were invaded by their landlords and authorities in the regions of the middle and lower Dnieper region.

The norms of civil law, which were established in Zaporizhia, regulated the military and administrative organization of the cossacks, some rules of warfare, the work of the courts, the order of land administration and the establishment of certain contracts, and the types of crimes and punishments. The existence of a special law in the Cossacks was determined by the Polish law. Regardless of the sovereignty or even the severity of the norms of the Cossack common law, it was «honesty great». Kozatsstvo always upheld the civil law, fearing that the written law could limit the Kozatska's freedoms [38].

It should be noted that the legal norms in Zaporozhye Sichi from the middle of the 18th c. In the 18th century the Cossack Council began to act as a legislative body, which issued legal norms that were written down in writing. Such legal changes make it impossible to interpret the legal norms at their discretion and allow the goat community to introduce rules of law. In 1762 at the council there was «made a written and circular commitment in the Zaporozhian army to always maintain and preserve the good order approved by the previous military order, namely: to prevent theft on the borders and to keep peace if anyone dared to commit any violation of the approved order or to the commander of the Kosh in what the obedience and duty... ...the elders and the Cossacks should not obstruct the punishment. It is our permission that the koshovoy otaman and the army elder should not change their rights and decrees from now on without important reasons and crimes[39].

The law of the Zaporozhians can be considered a typical example of the early stage of the formation of legal norms. This is evidenced by such historically established characteristic features: the wide use of capital punishment; the highly judicial, especially corporal, punishments;

[38] Atamanova N.V. Zabezpechennia pravovoho poriadku v Ukraini instytutsiiamy Zaporizkoho kozatstva. *Aktualni problemy derzhavy i prava : zb. nauk. prats*. 2011. Vyp. 58. S. 131–135.

[39] Tatsii V.Ia. Istoriia derzhavy i prava Ukrainy : u 2 t. Kyiv. : VD «In Yure», 2003. T. 1. 2003. 648 s. S. 190.

corporatism; the dominant role of «public law»; the limited form of expression of legal norms (in most cases); conservatism; and ritualism[40].

Important for understanding the development of the concept of the rights and freedoms of the people and the citizen are the problems of power and people, which allow to understand the tendencies of social determinations, legal norms and political practice of the given period, as an important stage of the formation of Ukrainian statehood and the formation of legal conditions for the functioning of Ukrainian society[41].

Most of the theorists of this period were connected with the Kyiv-Mohyla Academy, which became the center of scientific and civil-political life not only of Ukraine, but also of Russia and a number of European countries, thanks to its lecturers and graduates, who became well-known historical activists. For example, the philosopher and theorist of state and law Theophanes Prokopovich (1681-1736), rector of the Kyiv-Mohyla Academy, who followed the reformist approaches of Peter the Great and Pilip Orlik, developed the concept of educated absolutism. In his main treatises: «The Word on the Power and the Royal Honor», «The Truth of the Monarch's Will», «The Spiritual Regulation», referring to the ideas of the representatives of the natural law theory of the times of the European Enlightenment – T. Hobbes, S. Puffendorf, H. Thomasius, H. Volf, he formulated the conditions for the existence of the sovereign state and discussed the necessity of asserting the power of the monarch and the need to subordinate it to the spiritual power. In his opinion, the monarchical state was based on peace, goodness, love, and war, hatred and evil. To this, for the sake of the supreme protection of their rights, the people handed over power to the monarch. Between the monarch and the subjects a treaty is established, but it is one-sided, i.e., it is only about the transfer of power to the monarch, and anyone who asks for power is judged. Only the monarch shall ensure protection against foreign enemies and internal strife. And for the integrity of this monarchical power, the spiritual power must be subordinated to it. The absolute monarch, as the supreme bearer of state power, stands above all the laws of the people. All the monarch's actions

[40] Zaporizka Sich, yii politychnyi ustrii ta pravo (kinets XV st. – seredyna XVII st.). URL: http://kotovsk-live.ucoz.ua/publ/kozachestvo/zaporizka_sich_jiji_politichnij_ustrij_ta_pravo_kinec_xv_st_seredina_xvii_st/11-1-0-32 (last exess 01.03.2022).

[41] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

were judged to be directed at the national treasure and were therefore justified[42].

Monarch F. Prokopovich characterizes the monarch as a learned ruler – «a philosopher on the throne». In the development of education and science the author believes the basis of the historical process, the power of the state and the well-being of the people. In the author's opinion, the educated monarch himself ensures the development of science, arts, crafts and manufactures. In absolute monarchy Prokopovich sees the guarantee of rights, property interests, the development of the church, and everything necessary for the society. Thus, in his conception, the main subjects were the state and power in the form of the monarch. Such views were held by F. Prokopovich was valuable for the monarchical power, and for many years he was an advisor to the Russian Tsar Peter I in carrying out reforms in the Russian Empire.

Another representative of the Kievo-Mohyla Academy, philosopher and church-political activist Stefan Yavorsky (1658-1722) also strongly supported Peter I's reforms in the spheres of economy, army, and education. However, in his views on the priorities of world and church power he differed with Prokopovich, in fact, with his ecclesiastical policy opposing Peter I. Stefan Yavorsky criticized the church reform, protected the interests of the church, and upheld its right to handle all church affairs. And later on he proclaimed the thesis that the church is above the state and should rule both the ecclesiastical and the secular power. The autonomy of the church, in his view, allows the institution to play the role of the leading arbiter in matters of morality and social life. C. Yavorsky fostered good relations with his prominent contemporaries – Hetmans Ivan Mazepa and Pilip Orlik. With the latter he was in constant correspondence, having expressed many of the ideas that Pilip Orlik used in his Constitution – «Pacts and Constitution of the Laws and Freedoms of the Zaporozhian Army» of 1710[43].

It is also possible to state that S. Yavorsky had a significant influence on the formation of the concepts of Ukrainian statehood at this stage of the social development. A graduate of the Kyiv-Mohyla Academy was

[42] Kormych A. I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

[43] Kormych A. I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

also a prominent Ukrainian thinker Grigory Skovoroda (1722-1794), who was often compared to the ancient Greek philosopher Socrates. His philosophical and political-legal decadence were permeated by a deep faith in mankind, its possibilities, chastity, and perfection. He clearly understood mankind and nature as «microcosm» and «macrocosm», considering the main characteristic and task of mankind on the Earth to know and realize the potentiality set in it by nature. This is the way in which his journals, for example, the collection The Garden of Divine Pines, are decorated. He paid great attention to the issues of human rights. He considered the right to be happy and to be protected from injustice to be the primary rights of mankind. The happiness of mankind G. Skvoroda associated the humanity with the loving work, and the misery – with the necessity to occupy oneself with matters other than one's own. The philosopher regarded the humanity's absorption by mankind as injustice. Thus he condemned the division of the society into the rich and the poor. He called the Baggatii toilers and the working people to bjoles. The importance of G. Skovoroda gave importance to the education of the youth in accordance with the laws of nature. 50 In his understanding, God is nature, and mankind as a part of nature carries God in his heart, thus becoming a part of God, and also a creator on Earth. The philosophical and political-legal concept of G. Skovoroda, imbued with faith in mankind, laid the foundation for the epoch that was called the «Baroque epoch» and was accepted and continued by prominent scholars in the following periods of state and social development.

For example, in the nineteenth century these ideas were developed by P. Yurkevich, P. Kulish and others. This concept also influenced the views of the next epoch – the «Age of Romanticism». G. Skovoroda upheld the ideals of freedom, considering the Great War under the leadership of Bogdan Khmelnytsky as the most beautiful page of Ukrainian history. Along with this, he condemned the policy of disintegration between the peoples, especially on the religious front. The main subject of history and social development for him was always the people, not the state and power.

An important role in the development of legal ideas of this period was played by the Ukrainian and Russian enlightener, renowned legal scholar Semyon Desnitsky (1740-1789), a native of Chernigov, a graduate of the University of Chernivtsi. He was a graduate of the University of Glasgow

(Great Britain), where he became a doctor of civil and ecclesiastical law, as well as a doctor of Roman and Russian law, and a public professor of jurisprudence at the Moscow University. He criticized German law as being too bogged down in scholastic subtleties and was more accepting of the laws and courts of Great Britain. In his work «Statements on the Establishment of the Legislative, Judicial and Criminal Power in the Russian Empire» in 1768 he formulated his own concept of the organization and function of the state power. He defended the idea of the subdivision of power. He placed the legislative power in the hands of the monarch, and the judicial and penal power in the hands of the Senate and the courts with the election of judges. He compiled a glossary of legal terms, starting from the ancient legislative memories of the times of Kievan Rus'[44].

C. Desnitsky differentiated the rights of the people into several categories:

1 – natural rights, which people use to protect themselves, their honour, dignity and property;

2 – natural rights, which arise in society and depend on the status of the person in various spheres – legislative, judicial, penal;

3 – property rights and rights that arise in the relationships of people with each other – ownership, ownership, spacedom, contract, personal privileges, contract law and others;

4 – the rights of amenity, welfare, restraint and security, which prevent internal disturbances and protect against hostile attacks. Thus, it analyses the whole complex of individual and communal rights that are to be guaranteed by the state and the authorities. He links the very emergence of the state to the «social contract» for the protection of the rights of the people.

C. Desnitsky drafted a new Statute, which provided for the reformation of the government in order to protect the rights of the people and to increase local self-government. He judged the right of cryptography, called for the enfranchisement of the peasants and argued for the necessity of formal legal equality of all people. Desnitsky insisted on the priority of the rights of the people for their universal development and satisfaction of their needs. Thus, like most of the leading men of the time, he was a supporter of the priority of the rights of mankind, considering the state and the state

[44] Kormych A.I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky.* 2014. Vyp. 53. S. 350–356.

power exclusively as the guarantor of such rights. But the recognition of natural freedoms and equality was intertwined with the social and social nervousness in society. Another prominent representative of this epoch was Yakov Kozelsky (1729-1795), a philosopher, enlightener, and legal scholar[45].

His work developed the concept of the natural rights of mankind and the contractual approach of the state. His main work, Philosophical Propositions, is permeated with the ideas of liberalism and democracy. While exploring various forms of government, he was particularly sympathetic to a republic where there would be no division between the rich and the poor, and where all people would live by their own work and private property would be limited. He upheld the equality of the rights of all the peoples of the Russian Empire, called for the condemnation of slavery, and condemned the wars of secession, putting peace and peace treaties first. Kozelsky believed that the enlightenment of the people could be combined with the «good will» of the monarch to solve all complex social problems. He especially studied and promoted the ideas of the French and German enlighteners – Voltaire, Montesquieu, Rousseau, Puffendorf, Wolff, Thomasius.

He divided all existing rights into four views:

1 – divine, which are untouchable, given to mankind by God;

2 – natural, i.e., natural, given to mankind by nature;

3 – Universal, i.e., international, which are to lead the world to the world;

4 – civil, i.e., state, which are determined and guaranteed by the state[46].

Thus I. Kozelskiy defined a wide range of human rights and freedoms, defined both the sphere of action of the law and its main subject, responsible for the realization of these rights. An analysis of the views of various representatives of the period of the development of Ukrainian society allows us to conclude that most of them were concerned with the issues of securing the rights of the people and sought effective mechanisms for guaranteeing such rights, including the use of the powers of the state.

In the nineteenth century. Divided between Russia and Austro-Hungary, Ukraine in the composition of these two empires gradually entered into the turmoil of bourgeois-democratic reforms. As in other countries, this

[45] Andrusiak T.H. Istoriia politychnykh i pravovykh vchen. Lviv : LNU, 2001. 220 s.

[46] Kormych A.I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

process was accompanied by a steady strengthening of the state's respect for the problem of human rights. In fact, this problem was first formulated at the theoretical level and embodied in the realpolitik of the revolutionary transformations. Peasant, land, court and other Russian reforms of the second half of the XIX century. In the nineteenth century, the land reforms of the 18th century brought individual freedom to the colonial peasants, established the beginnings of local self-government in the form of zemstvos, initiated a number of democratic changes in the administration of justice, and added to the role of individuality in many other spheres of state and communal life[47].

The next step was the democratic changes brought about by the first Russian revolution. In the late summer of 1905. The Supreme Manifesto of 19 August was adopted, which established the State Duma as the supreme executive body of the Russian Empire. The beginning of the work of the State Duma was planned for the beginning of 1906. However, the All-Russian political strike of September 12-18, over 2 million people in different branches of industry were involved in the strike. people. This mysterious strike and, above all, the strike of the salaried workers, have forced the emperor to take action. In order to bring the crisis to an end, it was necessary to act in a timely manner, which forced Mikola II to take legislative powers (the entire authority of the executive power remained in the hands of the emperor). The head of the Council of Ministers of the Russian Empire S.Witte submitted to Mikola II a note on the necessity of political reforms. The Tsar, having taken note of it, after long and painful deliberations decided to issue a Manifesto, which contained the basic provisions of the message[48].

Thus, on the 30th of June 1905. the Emperor signed the Supreme Manifesto for the Improvement of the State Order, known in history as the «Manifesto of 17 September 1905» (in the old style). It was signed by the Head of the Council of Ministers of the Russian Empire S.Witte. When signing the Manifesto, Tsar Nicholas II considered that he had taken a terrible decision, which would have an unknown effect on the duty of russia. The document stated that the popular unrest and strife

[47] Andrusiak T.H. Istoriia politychnykh i pravovykh vchen. Lviv : LNU, 2001. 220 s.

[48] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

could cause «a threat to the integrity and unity of our state». Therefore, in order to ensure that popular protests against the order of the country would be put to rest, the Manifesto laid down the following conditions: By the Tsar's Manifesto of 17 September 1905, the Tsar of Russia issued a decree of 17 September 1905. It was proclaimed «the indestructible foundations of civil liberty on the ambushes of the individual, the freedom of the state, of speech, of assemblies and of associations». The power of the monarch was measured by the representative institution – the State Duma[49].

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The conditions for the transformation of Russia into a constitutional monarchy were in place, and legal political parties, trade unions and other civic organizations, liberal and radical opposition newspapers and magazines first appeared in the country. It should be noted, however, that for every democratic right or freedom that was voted for, there were numerical conditions and limitations that sometimes made it even more difficult to exercise. In the course of the XIX – the beginning of the XX centuries. The idea of the rights of humanity became more pervasive in the Russian science of international law and diplomatic practice, which was supported by the legal scholars of Kyiv, Kharkov and Odessa. The Ukrainian political-legal thought was also reflected in the program documents of the first political parties. All of them were based on the respect for the individual freedom of the people, aimed at ensuring the freedom of the person and

[49] Mahas-Demydas, Yu.I. Manifest 17 zhovtnia 1905 roku yak pidgruntia demokratyzatsii suspilstva ta rozvytku prav liudyny v Rosiiskii imperii. Litopysets: Zbirnyk naukovykh prats VI Vseukrainskoi naukovo-praktychnoi konferentsii «Prava liudyny: istorychnyi vymir i suchasni tendentsii (do 70-richchia pryiniattia Zahalnoi deklaratsii prav liudyny)» (m. Zhytomyr, 6 hrudnia 2018 roku) (14). S. 61–63.

life, freedom of society, speech, freedom of assembly, freedom of assembly, freedom of association and other democratic rights and freedoms[50].

The addition of the Ukrainian People's Republic and the West Ukrainian People's Republic was a further important step in the promotion of human rights in Ukraine. The Third Universal of the Ukrainian Central Rada proclaimed «freedom of speech, freedom of speech, freedom of belief, freedom of association, freedom of union, freedom of strike, freedom of the individual and freedom of speech, the right and the possibility of living in harmony with all the institutions of the country»[51].

The motion is about the Law of the Ukrainian Central Council «On National-Personal Autonomy» of 9 March 1918, which gave each of the nations that The Russian, Jewish, Polish and other peoples in Ukraine were given national-personal autonomy in order to ensure their right and freedom of self-determination in matters of their national life. In the Fourth Convention of the Ukrainian Central Council it was voted: «in the self-governing Ukrainian People's Republic, the peoples shall enjoy the right of national-personal autonomy recognized for them by the law of the 9th of January»[52].

The motion is about the Law of the Ukrainian Central Council «On National-Personal Autonomy» of 9 March 1918, which gave each of the nations that inhabited Ukraine «the right, within the limits of the Ukrainian People's Republic, to national-personal autonomy: that is, the right to self-government of its national life, which is exercised through the organs of the National Union...».

No other European state had such a law. Moshe Zilberfarb, the first comrade of the Secretary for Jewish Affairs in the expanded General Secretariat, compared this law with the actions of the Great French Revolution[53].

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[50] Antonovych M.M. Spivvidnoshennia mizhnarodnykh ta vnutrishnoderzhavnykh mekhanizmiv zabezpechennia prav liudyny. *Naukovi zapysky.* NaUKMA. Tom 10. Kyiv. 2000. S. 40–44.

[51] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

[52] Zakharchenko P.P. Tretii universal ukrainskoi Tsentralnoi Rady yak akt proholoshennia derzhavnoi nezalezhnosti Ukrainy. *Naukovyi chasopys NPU imeni M.P. Drahomanova. Seriia №18. Ekonomika i pravo.* 2013. Vypusk 23. S. 112-118

[53] Shevchenko V.F. Tsentralna Rada: polityka ukrainizatsii. *Naukovi zapysky Instytutu politychnykh i etnonatsionalnykh doslidzhen NAN Ukrainy im. Kurasa*. Kyiv, 2008. Vypusk 39. S. 109–110.

At the same time as the rest voted for the rights of the people, the Ukrainian law voted for the rights of nations. The Constitution of the Ukrainian People's Republic of 1918, the Draft Basic State Law of the Ukrainian People's Republic attached considerable importance to the rights of the citizens of Ukraine. Both acts contained articles on the equality of rights of men and women without «distinction of religion, nationality and origin»; no one could be imprisoned on the territory of the Ukrainian National Republic without a court order, except in the case of a hot child; a citizen's house (home hearth) was deemed to be untouchable; «revictions (cowardice)» could only be carried out on the basis of a court order and in cases prescribed by law; and «leaf secrecy» was established; the freedom of opinion and belief, as well as the freedom to change religion, was guaranteed; all those recognized by the State had the right «to hold public devotions, to perform religious rites and to found religious societies»; the full freedom of «change of the place of prostitution» (the full will to change the place of residence and to transfer one's property within the borders of the state, the right to emigrate outside the borders of the state, except in cases where it is stipulated in the law) was also proclaimed[54].

1.3. Human rights and freedoms in the Soviet period (1922-1991)

Four constitutions were adopted in Ukraine during the period of Soviet rule (1919, 1929, 1937, 1978). These acts enshrined the positive effects of the social revolution and the formal attributes of Ukrainian Soviet statehood. As far as the rights of the people are concerned, their conceptual basis for three hours was the provisions of the Declaration of the Rights of the Working and Exploited People, adopted in the beginning of 1918[55].

The Third All-Russian Congress of Councils. The necessity of solving social and economic questions as an integral part of the creation of a world of work for the workers was particularly emphasized. All Constitutions have enshrined the different legal status of the individual, the scope of his rights and freedoms. This gives the opportunity to explain the dynamics

[54] Ukrainska Tsentralna Rada: dokumenty i materialy : u 2-kh t. T. 1. Kyiv : Naukova Dumka, 1996. 587 s.

[55] Ukrainska Tsentralna Rada: dokumenty i materialy : u 2-kh t. T. 1. Kyiv : Naukova Dumka, 1996. 587 s.

of the formation and development of human rights and freedoms from the point of view of the legal status of the individual[56].

Already in the Constitutions of the USSR of 1919 and 1929. The list of human and citizen's rights was even wider than in the previous constitutional acts. And the Constitution of the USSR of 1937. The Constitution of the Republic of Poland of 1919 of 1937 enshrined a wide range of rights and freedoms, among which the following took a prominent place: Economic rights (the right to personal property and the right to the rest of personal property, the right to work, the right to rest); social rights (the right to material security in old age, in case of illness and loss of earning capacity); cultural rights (the right to education); political rights (freedom of speech, freedom of speech, freedom of assembly and meetings, freedom of public marches and demonstrations, freedom of the state, right to join community organizations); individual rights (the right to be free from torture, the right to life, the right to vote); electoral rights (which were covered by a specific section)[57].

Ukraine has undergone significant social and political changes in the area of democratization, which has been reflected in its acceptance of international legal obligations and membership in international organizations. During the Second World War, for its important contribution to the defeat of fascism, our country gained wide recognition and prestige in the international arena, and in 1945 it became a member of the United Nations. In 1945, our country became one of the founders of the Organization of the United Nations, was repeatedly elected a member of the main UN bodies, its committees and commissions. Since then, it has acted as a subject of international law and international relations. Ukraine took an active part in the preparation and adoption of international legal instruments in the field of human rights and freedoms.

For example, specific proposals of the Ukrainian side were included in the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on

[56] Skomorovskyi B.V. Rozrobka konstytutsii SRSR 1924 r. ta yii rol u pravovomu oformlenni yedynoi soiuznoi derzhavy. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V. N. Karazina № 1000. Seriia «Pravo»*. 2012. Vypusk № 11. S. 86–89.

[57] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

Economic, Social and Cultural Rights, the International Convention on the Elimination and Punishment of the Crime of Apartheid, etc.

On the basis of all previous Soviet constitutions, the Constitution of the URSS of 20 April 1978. The Constitution of the Republic of Belarus of the 18th century is distinctly different both in its structure and in the scope of the rights and freedoms enshrined in it. In it, the status of the individual was given two chapters, a separate chapter regulated the basic principles of citizenship, defined the status of foreigners and stateless persons on the territory of Ukraine, established the level of the rights of citizens before the law, the level of the rights of men and women. A whole chapter was also devoted to the fundamental rights, freedoms and obligations of the citizens, in which the fullness of the rights of the citizens in all the main spheres was proclaimed, in particular, in Art. Article 37 stipulated that the citizens of the USSR had the full range of social, economic, political and individual rights and freedoms guaranteed by the Constitution of the USSR, the Constitution of the USSR and the laws. The possibility of expanding the rights and freedoms of the citizens in the measure of realization of the program of the development of the society was voted. At the same time, the standards of human rights enshrined in the international legal instruments to which the USSR was a party were not fully respected[58].

In the system of rights and freedoms, priority was given to social, economic and cultural rights. Practically, this category of rights was the most effective in life. These include the rights to work, leisure, health protection, housing, the right to use state property, and the right to personal property, which is not very exchangeable. Among the cultural rights was the right to education, which was guaranteed by the free of charge nature of all types of education and by a regular secondary education, the right to enjoy the achievements of culture, and the freedom of scientific, technical and artistic creativity. Political, civil and individual rights and freedoms, as in previous Soviet constitutions, were given a different role. This category of rights and freedoms included: the right to take part in the management of state and communal affairs; the right to make proposals to state bodies and communal organizations, to criticize their shortcomings; freedom of speech, freedom of assembly, meetings, marches and demonstrations.

58 Tymtsunyk V.I. Reformuvannia systemy vlady ta derzhavnoho upravlinnia v URSR (1953-1964): monohrafiia. Kyiv: Vydavnytstvo NADU. 2003. 400 s.

These provisions of the law were declarative and had no corresponding mechanisms for their implementation.

The individual rights included the right to privacy and life, the protection by the state of the individual life of the citizens, and the right to vote. A new element among the individual rights was the inclusion of the right of citizens to challenge the actions of state and municipal bodies. The complaints were to be examined in the order and according to the rules laid down by law. The acts of the officials, committed in violation of the law, could be brought to court. Constitution of the USSR 1978. The Constitution of the USSR of 1978 also provided for the enshrinement of a wide range of rights and freedoms, which was unusual at that time for the constitutions of most countries of the world[59].

1.4. The development of human rights and freedoms in the first years of Ukraine's independence (1991-1998)

Voting on 24 August 1991. The independence of Ukraine opened a new page in the history of our state and its people, gave the opportunity to expand the rights and freedoms of the citizens, to give them a new meaning and significance. In the Declaration on the Sovereignty of Ukraine of 16 July 1990 and the address of the Supreme Soviet of Ukraine «To the Parliaments and Peoples of the World» of 5 December 1991. The Supreme Soviet of the Russian Federation, on the occasion of its resolution of 11 May 1991, insisted that a new, democratic, law-abiding State could join the ranks of civilized countries, which would, in particular, effectively safeguard the rights and freedoms of human beings and citizens and would be obliged to adhere strictly to the principles and norms of international law and international standards in the area of human rights and freedoms.

Social and political violations in 1985-1990 And especially the August 1991 crisis. They deeply stiffened the Ukrainian society and created favourable conditions for democratic transformations. The first legislative acts of the newly established independent state did not leave any ambiguities as to the legal framework of the set goals. It is sufficient to turn to the laws of Ukraine «On Property», «On Entrepreneurship», «On Freedom of

[59] Konstytutsiia, Zakon vid 20.04.1978 № 888-IX. URL: https://zakon.rada.gov.ua/laws/show/888-09 (last exess 02.03.2022).

the State and Religious Organizations», «On the Citizenship of Ukraine», «On the City Councils of People's Deputies and City and Regional Self-Government», «On the All-Ukrainian and Local Referendums» and others, in order to change the fact that the priority of the State's activity is to protect and ensure the rights and freedoms of the people and citizens and to create a working mechanism for their realization[60].

Adopted on 9 November 1995, the accession of Ukraine to the Council of Europe had a significant impact on the further development of human rights and freedoms of the citizen. Ukraine joined a large number of multilateral European conventions in the field of human rights and freedoms and assumed specific obligations to implement their norms in national legislation. In addition, membership of the Council of Europe stimulated the process of drafting and adopting the Constitution, the basic law of the new democratic state. The Constitution of Ukraine of 1996. It is the first measure of the modern constitutionalism in the issues of the rights and freedoms of the people and the citizen. It defined a new, contemporary status of the human being and the citizen in Ukraine, in fact, making a «humanist revolution». Human life, honour and dignity, non-violence and security were declared in the Constitution (Article 3) to be the highest social value.

The rights and freedoms of the people and of the citizen are the basis and dependence of the activity of the State. The State, in accordance with the Constitution, is accountable to the people for its actions. The affirmation and safeguarding of the rights and freedoms of the people is the primary responsibility of the State. Based on this concept, the Constitution of Ukraine devotes a special section II to the rights, freedoms and obligations of the people and citizens. This section is one of the most important in the Constitution and contains nearly one third of its articles. The Constitution of Ukraine implements all the main provisions of international legal instruments on human rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which are among the greatest achievements of 20th century humanity. In the humanistic sphere, a true «human dimension», a measure of human dignity.

[60] Bielov D. Paradyhma konstytutsionalizmu: teoretychni pytannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo»*. 2012. Vyp. 18. S. 57–60.

The Constitution of Ukraine of 1996. For the first time, instead of a fragmentary set of rights and freedoms, the Constitution of 1996 established a system of rights and freedoms in all the main spheres, providing, in particular, for civil, political, economic, social and cultural rights and freedoms of the people and the citizen[61].

The new Fundamental Law of Ukraine significantly expanded the number of constitutional rights and freedoms, providing for a low number of new rights and freedoms, and substantially reduced them by increments. It first provided for such essential rights and freedoms as the right to life (Article 27), the right to information (Article 34), the right to private property (Article 41), the right to entrepreneurial activity (Article 42), and the right to strike (Article 44, 48), freedom of transfer, freedom to choose the place of residence, the right to leave the territory of Ukraine and to return to Ukraine (Article 33), etc. The right to the right to a fair standard of living (Article 33)[62].

Some time has passed since the adoption of the Constitution of Ukraine has shown, civil and political rights and freedoms are in need of real protection. Thus, their implementation resulted in the death penalty, the establishment of more than 90 political parties, and the formation of a civil society. The Constitution guarantees rights and freedoms in every respect, and provides for a mechanism to ensure and protect them. This is evidenced, in particular, by the system of constitutional normative-legal guarantees of rights and freedoms, such as legal responsibility for violations of rights and freedoms, the integrity and inviolability of rights and freedoms, their inexhaustibility, the inadmissibility of infringements, and the meaning and scope of existing rights and freedoms. One of the greatest achievements in guaranteeing rights and freedoms is the system of legal and institutional guarantees provided for by the Constitution, among which the President of Ukraine has a particularly important role, The President of Ukraine, the Verkhovna Rada of Ukraine, the bodies of executive power and local self-government, the courts, the prosecutor's office and the Supreme Council of Ukraine on Human Rights.

[61] Konstytutsiia Ukrainy. URL: https://www.president.gov.ua/documents/constitution (last exess 02.03.2022).

[62] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

In addition to national guarantees, the Constitution provides for the possibility of using international legal guarantees. In accordance with Art. 55 of the Constitution of Ukraine, everyone has the right, after using all national means of legal protection, to apply for the protection of his rights and freedoms to the appropriate international judicial bodies or to the appropriate bodies of international organizations of which Ukraine is a member or participant. The protection of human rights and freedoms is also an additional guarantee of the international mechanisms for the protection of human rights to which Ukraine has acceded.

An important step in this regard was the ratification of 17 July 1997. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The citizens of Ukraine were given the opportunity to apply to the European Court of Human Rights for the protection of their violated rights. In addition, after joining in 1990. In 1990, Ukraine acceded to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966, and also recognized the competence of the United Nations Human Rights Committee to consider the individual complaints of the citizens of Ukraine concerning violations of their rights and freedoms guaranteed by the Covenant. The Constitution of Ukraine has legally justified all normative transgressions on the way to ensuring the rights and freedoms of the people and citizens, declaring that the norms of the Constitution of Ukraine are norms of direct action and that recourse to the courts for the protection of the constitutional rights and freedoms of the people and citizens is guaranteedby the Constitution of Ukraine without exception.

The Constitution of Ukraine, unlike the constitutions of some other countries, has enshrined the rights of the people and the citizen, but only those which are of fundamental importance for the safeguarding of rights and freedoms: the obligation to adhere unwaveringly to the Constitution and the laws of Ukraine, not to infringe on the rights and freedoms, honour and dignity of other people (Article 68); the obligation to protect the nationality, independence and territorial integrity of Ukraine (Article 65); the obligation to pay taxes and levies in the order and in the amounts established by law, etc.; the obligation

to pay taxes and levies in the order and in the amounts established by law, etc[63].

The peculiarity of the Constitution of Ukraine is that it provides for the establishment and strengthening of a legal mechanism for the protection of human rights and freedoms. This concerns, first of all, the organization and exercise of State power in the areas of its division into legislative, executive and judicial (Article 6). The judiciary itself, as noted, is responsible for the protection of constitutional rights and freedoms. According to the Constitution, the court's penal function is subordinated to the legal and regulatory function. According to the transitional provisions of the Constitution of Ukraine and the Law of Ukraine «On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms» of 17 July 1997[64].

An important link in the mechanism of protection of the rights and freedoms of the people and citizens is the Constitutional Court of Ukraine, which exercises judicial constitutional control and protection of the foundations of the constitutional order, the fundamental rights and freedoms of the people and citizens, ensuring the rule of law and the direct application of the Constitution in the whole territory of Ukraine. By exercising constitutional control, the Constitutional Court of Ukraine exerts a significant influence on the activities of the organs of state power in the sphere of upholding and protecting the rights of the people and citizens, especially in the sphere of lawmaking (legislation), making decisions on the non-compliance of certain legal acts or their specific provisions with the Constitution, giving interpretations of constitutional norms in the consideration of specific cases, and making official interpretations of the Constitution and the laws of Ukraine, which are binding on all subjects of law. The establishment of a special institute of the Supreme Council of Ukraine for the protection of human rights is an innovation in the system of protection of human rights and freedoms in our country. The Constitution of Ukraine enshrines the right of a person to apply to the Supreme Soviet for the protection of his rights (Article 55) and establishes that the parliamentary

[63] Konstytutsiia Ukrainy. URL: https://www.president.gov.ua/documents/constitution (last exess02.03.2022).

[64] Bielov D. Paradyhma konstytutsionalizmu: teoretychni pytannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo»*. 2012. Vyp. 18. S. 57–60.

control over the observance of the constitutional rights and freedoms of a person and a citizen is exercised through him (Article 101)[65].

The status, functions and competences of the Supreme Council of Ukraine on Human Rights are laid down in the Constitutional Law of Ukraine «On the Supreme Council of Ukraine on Human Rights», adopted by the Supreme Council of Ukraine on 23 December 1997. The positive experience of the ombudsman institution in European countries was taken into account in the drafting of this law. Nowadays, this institution is a universal instrument for detecting and facilitating the resolution of violations of human and civil rights and freedoms in Ukraine. It is impossible to understand the nature, functions and mandate of the new for Ukraine democratic institution of post-judicial protection of human rights and freedoms without the analysis of similar legal institutions in democratic countries of the world[66].

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[65] Myronenko O.M. Istoriia Konstytutsii Ukrainy: monohrafiia. URL: https://shron1.chtyvo.org.ua/Myronenko_Oleksandr/Istoriia_Konstytutsii_Ukrainy.pdf (last access 02.03.2022).

[66] Zakon Ukrainy Pro ratyfikatsiiu Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod 1950 roku, Pershoho protokolu ta protokoliv N 2, 4, 7 ta 11 do Konventsii. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/Z970475.html (last access 02.03.2022).

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