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LIMITATION OF HUMAN AND CITIZEN RIGHTS AND FREEDOMS AND THE ROLE OF THE SUPREME COUNCIL OF JUSTICE IN ENSURING INDEPENDENT JUSTICE AND EVERYONE'S RIGHT TO PROTECTION OF RIGHTS AND FREEDOMS BY AN INDEPENDENT COURT

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Deshko L., Vasylchenko O. Limitation of human and citizen rights and freedoms and the role of the Supreme Council of Justice in ensuring independent justice and everyone's right to protection of rights and freedoms by an independent court.

The article emphasizes the change of the paradigm of the constitutional-legal mechanism of limiting the rights and freedoms of a person and citizen, as well as increasing the role of the Supreme Council of Justice in ensuring independent justice. It is emphasized that it is necessary to distinguish between the concepts of "restriction of rights and freedoms" and "fixation of the boundaries of the very essence of rights and freedoms". Attention is drawn to negative human rights and the fact that they involve negative obligations of the state and its agents to refrain from any actions aimed at their violation or illegal restriction. It is characterized by the restriction of those rights and freedoms of a person and a citizen, which are most often restricted in the member states of the Council of Europe: the right to freedom and personal integrity, the right to private life, freedom of thought and conscience. The implementation of the prescription of Part 2 of Art. 35 of the Constitution of Ukraine, which defines the framework of restrictions on the human right to freedom of outlook and religion, through the Criminal Code of Ukraine.

Attention is drawn to the fact that the state's establishment of a number of legal norms that nullify a number of human and citizen rights and freedoms is a violation of human rights and fundamental freedoms guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms. It is noted that an effective judicial procedure significantly increases the level of their protection (rights and freedoms), as it contains a number of guarantees against their arbitrary restriction, contributes to the rendering of a legal and well-founded decision.

The article also draws attention to the legal status of the High Council of Justice. The issue of independent justice, the right of everyone to protection of rights and freedoms by an independent court is raised. The role of the High Council of Justice in ensuring independent justice and everyone's right to effective judicial protection is defined.

Key words: human rights, restrictions on the rights and freedoms of a person and a citizen, restrictions on the right to freedom and personal integrity, restrictions on the right to private life, restrictions on freedom of thought and conscience, the Supreme Council of Justice, the status of the Supreme Council of Justice, the judicial system, independent justice, law everyone for the protection of rights and freedoms by an independent court.

Дешко Л., Васильченко О. Обмеження прав і свобод людини і громадянина та роль Вищої ради правосуддя в забезпеченні незалежного правосуддя та права кожного на захист прав і свобод незалежним судом.

В статті акцентовано увагу зміні парадигми конституційно-правового механізму обмеження прав і свобод людини і громадянина, а також підвищенні ролі Вищої ради правосуддя в забезпеченні незалежного правосуддя. Підкреслюється, що необхідно відрізнити поняття “обмеження прав і свобод” та “фіксація меж самої сутності прав і свобод”. Звертається увага на негативні права людини та на той факт, що вони передбачають негативні зобов’язання держави та її агентів – утримуватися від будь-яких дій, спрямованих на їх порушення або незаконне обмеження. Характеризується обмеження тих прав і свобод людини і громадянина, які найчастіше обмежуються в державах-учасниках Ради Європи: право на свободу та особисту недоторканність, право на приватне життя, свобода думки і совісті. Розкривається реалізація припису ч. 2 ст. 35 Конституції України, якою визначаються рамки обмеження щодо права людини на свободу світогляду і віросповідання, через Кримінальний кодекс України.

Акцентується увага на тому, що встановлення державою низки норм права, якими нівелюється ряд прав і свобод людини і громадянина, є порушенням прав людини і основоположних свобод, гарантованих Конвенцією про захист прав людини і основоположних свобод. Зазначається, що саме ефективна судова процедура суттєво підвищує рівень їх захисту (прав та свобод), оскільки містить низку гарантій від свавільного їх обмеження, сприяє винесенню законного та обґрунтованого рішення.

Також в статті звертається увага на правовий статус Вищої ради правосуддя. Підіймається питання незалежного правосуддя, права кожного на захист прав і свобод незалежним судом. Визначається роль Вищої Ради правосуддя в забезпеченні незалежного правосуддя та права кожного на ефективний судовий захист.

Ключові слова: права людини, обмеження прав і свобод людини і громадянина, обмеження права на свободу та особисту недоторканність, обмеження права на приватне життя, обмеження свободи думки і совісті, Вища рада правосуддя, статус Вищої ради правосуддя, судова система, незалежне правосуддя, право кожного на захист прав і свобод незалежним судом.

Formulation of the problem

The relevance of the research topic is caused by urgent social needs – a change in the paradigm of the constitutional-legal mechanism for limiting the rights and freedoms of a person and a citizen, a practical necessity – shortcomings in the legislation of Ukraine and the practice of its application, which lead to violations of the constitutional rights and freedoms of a person and a citizen, debatable in legal science issues of criteria of arbitrariness, unfairness of restrictions on the realization of constitutional rights and freedoms of a person and a citizen, legitimate goal, social necessity to achieve this goal, questions of proportionality and reasonableness of the restriction, as well as in the doctrine of constitutional law – general and specific restrictions on the rights and freedoms of a person and citizen, conditioning restriction of a number of human and citizen rights and freedoms by the need to respect the rights and freedoms of other people and the need for the normal functioning of society and the state, their temporary restriction, control over the observance of the constitutional rights and freedoms of a person and citizen in the conditions of a state of emergency, the legal regime of martial law, etc.

In addition, the statistics of the European Court of Human Rights, published on its official website, show that: 1) in Ukraine, the national mechanism for restricting the rights and freedoms of people and citizens needs improvement; 2) legislation and the practice of its application in accordance with Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms [1].

It is well known: the judicial system of Ukraine must clean itself up and ensure everyone’s effective exercise of their right to judicial protection. It is not acceptable that the international mechanism for the protection of human rights takes over on a large scale the protection of the rights and freedoms of a person and a citizen in Ukraine due to the fact that the national mechanism for the protection of human rights is systematically recognized, for example, by the European Court of Human Rights, not effective

One of the key roles in increasing the effectiveness of the judicial system, and as a result, the effectiveness of the judicial protection of human and citizen rights and freedoms in Ukraine belongs to the Supreme Council of Justice.

The Supreme Council of Justice, after 10 months of non-authority and a complete renewal and change of approaches in its work, resumed its activities in an authorized composition from January 12, 2023. The Higher Qualification Commission of Judges of Ukraine, after almost four years of non-authority, was re-formed

according to new rules and resumed its work on June 1, 2023. The architecture of the judicial system and judicial governance was restored only on June 1, 2023. Long-term lack of authority of the governing bodies in the judicial system led to negative consequences [2].

In the science of constitutional law, the following scientists paid attention to the issue of limiting the rights and freedoms of a person and a citizen: Andrievska O.V. [3], Doroshenko E. [4], Irkha Yu. [5], Kozhevnikova V. [6], Maksimentseva N. [7] and others. At the same time, changes in social relations, such factors as the state of war in Ukraine, and Ukraine's European integration aspirations indicate the need to deepen and further develop the research conducted by the above-mentioned scientists.

The purpose of this article

The purpose of this article is to describe the limitations of the rights and freedoms of a person and a citizen, which are most often limited in the member states of the Council of Europe, the role of the High Council of Justice in ensuring independent justice and the right of everyone to the protection of rights and freedoms by an independent court.

Presenting main material

As you know, human rights are divided into negative and positive, depending on the mechanism of realization of individual freedom and means of its provision by the state. Negative human rights define the negative aspect of freedom and protect a person from unwanted interference by the state in the sphere of his personal rights and freedoms. They include most civil and political rights. Negative human rights include negative obligations of the state and its agents (state authorities and their representatives) to refrain from any actions aimed at their violation or illegal restriction. At the same time, the practice of the European Court of Human Rights shows that when limiting both positive and negative human rights, their violation often occurs. Let's consider those rights and freedoms of a person and a citizen, which are subject to the greatest restrictions in the states.

The right to freedom and personal integrity

Being natural in nature, the right to freedom and personal integrity is not absolute, because there are cases when the protection of the legitimate public interest, rights and freedoms of other persons requires its limitation and is therefore socially justified. First of all, this applies to the field of criminal justice, where public and personal interests collide, acute conflict situations arise, the resolution of which requires the use of procedural coercion measures. By giving the competent state bodies the opportunity to apply them, the state aims to prevent the abuse of rights so that the implementation of the constitutional rights and freedoms of one person does not harm the rights and freedoms of others. The reality of the right to freedom and personal integrity is based on a system of legal mechanisms that ensure its effectiveness and therefore acquire the meaning of legal guarantees. The most important of them are the judicial procedure for arrest and detention established for the first time by the Constitution of Ukraine, the clear regulation of the grounds and terms of these coercive measures in the branch legislation.

The right to private life

The main (principle) components of the modern understanding of the right to privacy are distinguished, taking into account, first of all, the interpretation of this right by the European Court of Human Rights. One of the most pressing issues in the context of restricting the right to private life is the issue of abortion.

Regulation on abortion belongs to the sphere of the right to respect for a woman's private life and the right to family life of the future father. In the event of a conflict between them, the right of the mother has priority in these matters. However, abortion also concerns the interests of society, so private life has certain limits in this matter. Given this approach, the restriction of abortions is not necessarily interpreted as interference in private life, which would be subject to justification in accordance with § 2 of Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms, and may constitute the sphere of state regulation, which in this case does not overlap with this international legal act.

The Strasbourg institutes, starting from the decisions on the very first cases, emphasized that there are restrictions on private life. Many actions of the state directly or indirectly affect a person's ability to self-realize, but not all of them can be considered interference in private life within the meaning of Article 8 of the Convention. Thus, the decision from 1972 reflected the point of view that the requirement of respect for private life automatically decreases as a person engages more and more in public activities or affects the interests of third parties. Among the considered cases was a decision on the lack of interference in private life when photographing people participating in a public event and regarding statements made during public hearings. It can be argued that "private" life ends where social activity begins.

Freedom of thought and conscience

Freedom of thought and conscience is one of the fundamental personal rights of a person, which means the freedom of an individual from any ideological control by the authorities and his freedom to independently

choose a system of spiritual values for himself. This freedom is much broader in its content than the freedom of religion. Because it includes the right to adhere to atheistic beliefs and covers all aspects of a person's intellectual and spiritual life. It is an absolute right of an individual and is not subject to restrictions under any circumstances.

In order to determine the means of guaranteeing the human right to freedom of thought, conscience and religion, an exhaustive list of possible restrictions on its application was established in international human rights acts. In addition, it was supplemented by provisions relating to the prevention of coercion that would reduce the freedom of a person to have or adopt a religion or belief of his choice and the right of parents and legal guardians to ensure the religious and moral education of their children, in accordance with their own beliefs.

In turn, it is through the Criminal Code of Ukraine dated 04.05.2001 that the prescription of Part 2 of Art. 35 of the Constitution of Ukraine, which defines the framework of restrictions on the human right to freedom of outlook and religion [8]. Yes, in accordance with Art. 67 of this Code, the circumstances aggravating punishment include the commission of a crime, including on the basis of religious enmity or discord. And in accordance with Art. 110 – encroachment on the territorial integrity and inviolability of Ukraine, the qualifying features that aggravate the committed act include the commission of actions provided for in part 1 of this article, which are combined with inciting religious enmity. In addition, Chapter V of the Special Part of the Criminal Code of Ukraine – “Crimes against electoral, labor and other personal rights and freedoms of a person and a citizen” contains five articles that directly relate to the human right to freedom of outlook and religion. Yes, criminal liability is provided for: Art. 161 – for violating the equality of citizens depending, among other things, on their attitude to religion; Art. 178 – for damage to religious buildings or religious buildings; Art. 179 – for illegal possession, desecration or destruction of religious shrines; Art. 180 – for obstructing the performance of a religious rite; and Art. 181 – for encroachment on people's health under the pretext of preaching religious beliefs or performing religious rites. At the same time, it should be noted that the Criminal Code of Ukraine provides for rather severe sanctions for the commission of these crimes - fines, correctional works, restrictions or deprivation of liberty for a period of one to five years, in case of aggravating circumstances regarding the committed crime.

At the same time, it is necessary to distinguish the concept of “restriction of fundamental rights and freedoms” from the concept of “fixation of the limits of the very essence of rights and freedoms” adopted in law-making practice.

Anyone who believes that their rights are arbitrarily restricted has the right to appeal to an independent court. Today, the judicial system is being cleaned, because without it, the right to a fair trial is a fiction.

One of the key roles in this process belongs to the Supreme Council of Justice. Next, we will give arguments why this role is one of the key ones and describe how it manifests itself.

The status of the Supreme Council of Justice is determined by Art. 1 of the Law of Ukraine “On the High Council of Justice”. The Supreme Council of Justice is a collegial, independent constitutional body of state power and judicial governance that operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning on the basis of responsibility, accountability to society, the formation of an honest and highly professional corps of judges, compliance with the norms of the Constitution of Ukraine and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors [9].

During 2020–2023, the High Council of Justice received 810 appeals about interference in the activities of judges, 274 reports were recognized as justified, more than 200 decisions on taking measures regarding interference in the activities of judges during the administration of justice were directed to law enforcement agencies. Unfortunately, only four indictments based on the specified facts have been submitted to the court.

The Supreme Council of Justice, in accordance with Clause 15 of Part One of Article 3 of the Law of Ukraine “On the Supreme Council of Justice”, provides mandatory advisory opinions on draft laws on the creation, reorganization or liquidation of courts, the judicial system and the status of judges.

All draft laws relating to the status of judges, the administration of justice, procedural laws, and more generally any draft laws that may have an impact on the judiciary, such as the independence of the judiciary, or may limit the guarantees of citizens' access to justice (including the judges themselves), should be considered by the parliament only after receiving the opinion of the judicial council.

Conclusions

The implementation of the principle of the rule of law, everyone's right to judicial protection is possible only with real observance of the constitutional provisions regarding the independence of judges, which contain legal guarantees aimed at preventing any influence on the judge and the judiciary.

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