

THE CONCEPT OF DEMOCRACY IN THE CONTEXT OF NEW HORIZONS OF THE UKRAINIAN CONSTITUTION. THE PHILOSOPHICAL AND CONCEPTUAL BASIS OF THE NEW CONSTITUTION

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Trends in the development and improvement of modern constitutional regulation are manifested through the corresponding values that are typical of the western type of society, state, western civilisation in general. Given the historical retrospective and the stages of the formation of the rule of law and civil society, such values can be conventionally classified into modern and classical ones. The emergence of classical values has become a consequence of the long-term development and improvement of civil society and the state, but they still form the basis of western civilisation. They are the structural basis for the section about human rights of the new Constitution. The synergistic effect of the interaction of classical values leads to the emergence of new values that permeate all sections of the new Constitution. Among other things, their appearance is connected with the extraordinary dynamics of society, science, technology, the effects of globalisation, their influence on the state over the past half century. For both varieties of values, there are tendencies of development and dynamics of functioning, and they differ for each of the groups. For classical values, the main trend is the dynamics of their understanding, influence on social relations and realisation of public power and positioning of a person in the system of foundations of the state and society. Modern values, given the reasons of their appearance and tendencies, manifest themselves in the adaptation of the person to the existing parameters of the state and society. It should be noted, however, that the operation of the modern values is characterised by mutual influence: on the one hand, they adapt to existing realities, on the other hand, they cause modernisation influence on the above-mentioned elements. Both classical and modern values operate in a complex. Only the cumulative effect of these values makes the state itself European, that is, one that belongs to western civilisation. On the European continent, in particular, it gives it the ability to integrate into the European Union and, globally, to structures such as NATO, because these characteristics are crucial for joining such organisations.

Given the certain conditionality of the division of these categories and their complex effects, they should be analysed in general, with emphasis, if necessary, on their origin. Some of the following values are of a purely legal nature, some of them

are based on ethics, some of them have a mixed nature, but they all have a forming influence on the state and society and directly or indirectly find their expression in legal norms. These are the rules of supreme legal force, that is, constitutional ones. Thus, the new Constitution acts not so much as a system of norms, but as a system of values.

(1) Multicultural pluralism, the maintenance of the diversity of identities, the denial of any form of nationalism. The basis of European civilisation as a multiplicity of different kinds of entities, operating within a single civilisation and legal space. Nationalism as a theory and practice contradicts the communitarian method, which is the basis of European integration. In the new Constitution, this approach is reflected, in particular, in the rules that establish a multiparty system, the prohibition of racial and any other discrimination in the legal field.

(2) Openness and integration ability. This quality is crucial for the normal coexistence of the state on the international scene. It also makes the state a potential member of existing integrational entities. In the new Constitution, this approach is reflected, among other things, through the recognition of fundamental international principles.

(3) Culture of peace (conflict resolution culture) and pacifism are the denial of violence as a way of solving internal and external state problems. It is one of the characteristics of the completeness of the legal system from the point of view of regulating social relations. It is a complex quality, which includes both legal components (ways of regulating social relations, legal culture) and ethical ones (civilisational and cultural features).

(4) Ethics of capitalism (pragmatism, economy, free competition, value of labour). The basis of the liberal economy. The law is implemented directly through a declaration in the form of appropriate principles (free competition) or subjective rights (right to work). In the new Constitution, the approach is reflected by providing norms such as the establishment of the right to private property of means of production and land, antitrust law, some subjective rights (freedom to conduct business etc.). This aspect of the new Constitution is also revealed through the doctrine of the 'constitutional economics'. The main idea is to determine the general influence of legal and economic factors on making decisions in the field of economic and social rights in the context of the relationship between the problems of the application of the Constitution and the structure, functioning of the economy. The constitutional economics reflects the approach according to which the solution of problems of state regulation of the economy must be found based not only on economic expediency, but also on the realities of the constitutional structure of the state.

(5) Sustainable economic development for future generations. The purpose and tasks of the functioning of a liberal economy. However, sustainable economic development is not needed in itself, but for the development of human civilisation. A fundamentally new direction for the development of constitutional regulation. Its

roots can be found in one of the main values of western civilisation, according to which the state must adhere to sustainable development in order to ensure future generations. The main idea is the synergy of the use of natural resources, scientific and technological revolution, human development and institutional improvement. The concept is manifested both at the national level and at local levels of government. At the national level, 'sustainable development' is manifested in the practical field, namely in forecasting, planning and extrapolation. The concept of 'sustainable development of territories' implies providing for the implementation of city-planning activities of security and favourable conditions for human life, limiting the negative impact of economic and other activities on the environment and ensuring the protection and rational use of natural resources for the benefit of present and future generations. The new Constitution implements these ideas as strategic principles and basis of the functioning of tax, customs, social policies, etc.

(6) *Rechtsstaat*. The basic principle that defines law as a public value and subordinates all socially important relations to regulation by law. It defines the essence of the 'state of law'. It is maybe declared in the new Constitution in the form of 'state of law'.

(7) Guarantees of property and the inviolability of private property. The basis of civil society, western mode of production and liberal economy.

(8) Democracy. The basis of public authority and the way of its implementation. One of the defining characteristics of the modern state. It is implemented in the new Constitution through political rights.

(9) Laicism (secular state). The separation of powers; public powers are divided into secular and spiritual. In the new Constitution, it is implemented by establishing the relationship between the state and the church, freedom of religion, etc.

(10) Tolerance. The basis of civil society, the principle that solves the problem of relative conflict-free functioning within a multicultural pluralism.

(11) Guarantees of minority rights. The defining feature of democracy, without which democracy loses its internal meaning and becomes a dictatorship. It is realised primarily in electoral law.

(12) Guarantees of self-expression and approval as a unique member of society. The main principle of civil society, which forms the basic unit thereof – the type of the citizen.

(13) Human rights guarantees. The basis of the relationship between the state and civil society. Subjective rights are crucial for the functioning of civil society, and guarantees are crucial for the 'state of law'.

(14) Social orientation and the responsibility of the state (protection of social outsiders). Definitive characteristic of the state, which establishes the responsibility of the state to individuals and civil society.

(15) Social partnership and solidarity. The basis of the functioning of civil society, the essence of which is the ability to group together in order to jointly solve problems and implement plans.

(16) Ecological safety. It determines the directions of the state's activity in order to find balance between the development of the economy and the safe conditions of human existence in the natural environment.

(17) Decentralisation and regionalism. The definitive characteristic of the territorial organisation of public power and organisation of the economy. Subsidiarity as a way of forming relations between central and local authorities.

(18) Social choice. The basic idea is manifested through the methods of using the institutions of power by people to meet their own needs. The social choice is based on three main preconditions. The first one is individualism: people act in the political sphere, pursuing their personal interests. The second one is the concept of an 'economic person'. The behaviour of the individual is rational. The rationality of the individual has universal significance in this theory. This means that all people – from voters to the president – are guided in their activities by an economic principle: 'comparing marginal benefits and marginal costs'. The third one is the treatment of politics as an exchange process. In politics, people pay taxes in exchange for public goods. This exchange is not very rational. The state is an arena of competition for influence on decision making. However, the state is a special kind of market. Its members have unusual property rights: voters can choose representatives to higher state bodies, deputies can make laws, and officials can monitor their implementation. Voters and politicians are treated as individuals exchanging votes and election promises. Proponents of the theory of social choice have shown that one cannot rely on the results of voting, because they are largely dependent on the specific rules of decision making. Therefore, the new Constitution proposes a number of new approaches (mass collaboration etc.).