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THE STATE AS A SPECIAL SUBJECT OF CONSTITUTIONAL AND LEGAL RESPONSIBILITY

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Кудрявцева О.М. Держава як особливий суб'єкт конституційно-правової відповідальності.

В статті фокусується увага на ролі держави в реалізації зовнішньополітичного курсу України – набуття повноправного членства в Європейському Союзі та Північноатлантичному альянсі, а також на ролі України в міжнародному співробітництві, що спрямоване на збереження, підтримку і відновлення миру, розвиток поваги до прав людини й основних свобод для всіх. Акцентується увага на видах суб'єктів конституційно-правових відносин, серед яких окрему групу становлять держава, органи державної влади та органи місцевого самоврядування, їх структурні утворення, зокрема парламентська більшість та парламентська опозиція, депутатські фракції, комітети тощо; депутати, службові та посадові особи. Звертається увага на спільні ознаки конституційно-правової відповідальності та юридичної відповідальності (відповідальність є наслідком правопорушення; пов'язана з реалізацією санкцій, які встановлено в нормах права). Наголошується на усталеному доктринальному підході щодо концепту конституційно-правової відповідальності.

Аналізуються ч. 2 ст. 3 Конституції України відповідно до якої держава відповідає перед людиною за свою діяльність, а також положення «утвердження і забезпечення прав і свобод людини є головним обов'язком держави» та ст. 9, ч. 2 ст. 55 Конституції України, яка гарантує кожному право на оскарження в суді рішень, дій чи бездіяльності органів державної влади, органів місцевого самоврядування, посадових і службових осіб, ч. 5 ст. 55, яка гарантує кожному право, зокрема, звертатися до Європейського суду з прав людини з індивідуальною заявою проти держави, ст. 56 Конституції України, яка гарантує кожному право на відшкодування за рахунок держави чи органів місцевого самоврядування матеріальної та моральної шкоди, завданої незаконними рішеннями, діями чи бездіяльністю органів державної влади, органів місцевого самоврядування, їх посадових і службових осіб при

здійсненні ними своїх повноважень, Конвенція про захист прав людини і основоположних свобод, Закон України «Про виконання рішень та застосування практики Європейського суду з прав людини», доктринальні підходи. Фокусується увага на заходах загального характеру.

В статті обґрунтовується, що держава є особливим суб'єктом конституційно-правової відповідальності. Підкреслюється, що держава несе конституційно-правову відповідальність вразі не виконання взятих на себе зобов'язання, якщо в результаті цього спричинено шкоду будь-кому.

Ключові слова: юридична відповідальність, конституційно-правова відповідальність, держава, суб'єкти конституційно-правової відповідальності, людина, права людини, головний обов'язок держави.

Kudriavtseva O.M. The state as a special subject of constitutional and legal responsibility.

The article focuses attention on the role of the state in the implementation of Ukraine's foreign policy course - the acquisition of full membership in the European Union and the North Atlantic Alliance, as well as on the role of Ukraine in international cooperation aimed at preserving, maintaining and restoring peace, developing respect for human rights and fundamental freedoms to all. Attention is focused on the types of subjects of constitutional and legal relations, among which a separate group is the state, state authorities and local self-government bodies, their structural formations, in particular the parliamentary majority and the parliamentary opposition, parliamentary factions, committees, etc.; deputies, officials and officials. Attention is drawn to the common features of constitutional and legal responsibility and legal responsibility (responsibility is a consequence of an offense; it is related to the implementation of sanctions established by law). Emphasis is placed on the established doctrinal approach to the concept of constitutional and legal responsibility.

Part 2 of Art. 3 of the Constitution of Ukraine according to which the state is responsible to the

person for its activities, as well as the provision «affirmation and provision of human rights and freedoms is the main duty of the state» and Art. 9, part 2 of Art. 55 of the Constitution of Ukraine, which guarantees everyone the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officials, part 5 of Art. 55, which guarantees everyone the right, in particular, to apply to the European Court of Human Rights with an individual application against the state, art. 56 of the Constitution of Ukraine, which guarantees everyone the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers, the Convention on protection of human rights and fundamental freedoms, the Law of Ukraine «On the Implementation of Decisions and Application of Practice of the European Court of Human Rights», doctrinal approaches. Attention is focused on measures of a general nature.

The article argues that the state is a special subject of constitutional and legal responsibility. It is emphasized that the state bears constitutional and legal responsibility in the event of non-fulfillment of its obligations, if as a result of this harm is caused to anyone.

Key words: legal responsibility, constitutional-legal responsibility, state, subjects of constitutional-legal responsibility, person, human rights, the main duty of the state.

Formulation of the problem. The question of whether the state is the subject of constitutional and legal responsibility is one of the most controversial in the doctrine of constitutional law. This is due to the fact that issues of legal responsibility of the state were raised more often in relation to the non-good faith fulfillment of the international obligations assumed by the state, for example, when the European Court of Human Rights issued a decision stating that the state violated one or another right guaranteed by the Convention on protection of human rights and fundamental freedoms. The decline of constitutional responsibility was the most raised by scientists in discussions about constitutional responsibility or political responsibility of state authorities.

At the same time, Ukraine's integration with the EU shows that the state must be viewed more and more in the light of the fact that it is the subject of constitutional responsibility, because the state itself is the subject in the international arena in matters of integration. In addition, in the conditions of the war unleashed by Russia, the Ukrainian people are resisting Russia's aggression, but the

state conducts negotiations with its allies, the state concludes international agreements, etc.

Therefore, the question of the state as a special subject of constitutional and legal responsibility is one of the most relevant in the science of constitutional law.

The state of development of this problem.

Constitutionalist scientists investigated in their scientific works the issue of holding states accountable by international judicial institutions (Y. Bysaga [1; 2], L. Deshko [3; 4], etc.), subjects of constitutional and legal responsibility (O. Sovgyria [5], N. Shuklina [5], etc.), responsibility of states for violations of human rights (O. Vasylchenko [6], N. Myalovitska [7], L. Lotyuk [8], A. Nechiporuk [9], L. Fedorenko [10], etc.), responsibility of the state for improper fulfillment of international obligations (M. Medvedev [11], etc.), etc. At the same time, the issue of the state as a special subject of constitutional and legal responsibility has not been comprehensively investigated.

The purpose of this article is to substantiate that the state is a special subject of constitutional and legal responsibility.

Presenting main material. In the doctrine of constitutional law, the following types of subjects of constitutional-legal relations are distinguished: 1) community (people, nation, national minorities, indigenous peoples, territorial communities, etc.); 2) the state, state authorities and local self-government bodies, their structural formations, in particular the parliamentary majority and the parliamentary opposition, parliamentary factions, committees, etc.; deputies, officials and officials; 3) political parties, public organizations and blocs; 4) citizens of Ukraine, foreigners, stateless persons, residents, refugees; 5) enterprises, institutions, organizations; 6) international bodies and organizations; 7) bodies of self-organization of the population; 8) mass media, etc. [5, p. 40].

Since constitutional-legal responsibility is a type of legal responsibility, it has all the features that characterize legal responsibility in general. In particular, such signs are: liability is a consequence of an offense; it is related to the implementation of the sanctions established by law.

Constitutional-legal responsibility in the doctrine of constitutional law means the type of social and legal responsibility provided for by the norms of constitutional law, which exists in the field of constitutional-legal relations, is characterized by the presence of specific subjects, the mechanism of implementation and sanctions, and consists in the forced suffering of measures of influence for an illegal act (retrospective aspect) and in the responsible state of the obliged subject (positive aspect), is the most important guarantee of implementation and protection of the constitution [5, p. 38].

In accordance with Part 2 of Art. 3 of the Constitution of Ukraine, the state is responsible to a person for its activities [12]. It follows from this that the subject that is responsible for the state's activities before the person is the state itself. As we see in part 2 of Art. 3 of the Constitution of Ukraine, this subject is clearly defined. Also in the same article it is stated that the establishment and provision of human rights and freedoms is the main duty of the state. Accordingly, the state bears constitutional and legal responsibility for non-fulfillment or improper fulfillment of these duties.

In accordance with Part 1 of Art. 9 of the Constitution of Ukraine, current international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine [12]. There is a principle in international law - treaties must be observed. A state may be held accountable for violating international obligations.

Scientists O. Sovgyr and N. Shuklin agree with V.O. Luchny, who notes that the state cannot be fully recognized as a subject of constitutional responsibility, as there is no institutionalization of it, as well as an instance that could apply state coercion to them. V.O. Luchin considers it possible to conditionally recognize the state as a special subject of constitutional responsibility, which bears it subsidiarily, as a guarantor of the responsibility of state bodies and officials [5, p. 40].

As already mentioned above, the state is responsible to people for its activities. According to Art. 56 of the Constitution of Ukraine, everyone has the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers). According to Part 5 of 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 their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant [12].

In 1997, Ukraine became a party to the Convention on the Protection of Human Rights and Fundamental Freedoms. In the Preamble to the Convention, it is stated that this Declaration aims to ensure the general and effective recognition and observance of the rights proclaimed in it, and that the goal of the Council of Europe is to achieve closer unity among its members and that one of the means of achieving this goal is the provision and development of rights human and fundamental freedoms. Also in the Preamble, it is emphasized that the High Contracting Parties reaffirm their deep faith in those fundamental freedoms, which are the foundations

of justice and peace throughout the world and which are best ensured, on the one hand, thanks to effective political democracy, and on the other hand, thanks to common understanding and observance of the human rights on which they depend, and that the High Contracting Parties are determined, as governments of like-minded European states with a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps to ensure the collective guarantee of certain rights proclaimed in the Universal Declaration of Human Rights [13; 14].

The jurisdiction of the European Court of Human Rights extends to all questions of interpretation and application of the Convention and its protocols submitted to it for consideration in accordance with Articles 33, 34, 46 and 47.

According to Art. 33 of the Convention, any High Contracting Party may refer to the Court the question of any violation of the provisions of the Convention and its protocols, which, in its opinion, was committed by another High Contracting Party (interstate cases).

If a person believes that one of the basic rights has been violated by one of the states listed in the list attached to the Convention on the Protection of Human Rights and Fundamental Freedoms, he can file an individual application with the European Court of Human Rights (Article 34 of the Convention).

According to Clause 1 of Art. 46 of the Convention: «The High Contracting Parties undertake to comply with the final decisions of the Court in any cases to which they are parties.»

The decisions of the European Court of Human Rights are as follows:

- 1) the final decision of the European Court of Human Rights in the case against Ukraine, which found a violation of the Convention on the Protection of Human Rights and Fundamental Freedoms;
- 2) the final decision of the European Court of Human Rights regarding just satisfaction in the case against Ukraine;
- 3) the decision of the European Court of Human Rights regarding the amicable settlement in the case against Ukraine;
- 4) the decision of the European Court of Human Rights on the approval of the terms of the unilateral declaration in the case against Ukraine.

The execution of the decision of the European Court of Human Rights entails the payment of compensation to the Debtor and the adoption of additional measures of an individual nature; taking measures of a general nature.

According to Art. 7 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights» [15] within ten days from the date of receipt of the Court's notification of the decision's acquisition of final status. Representation body:

1) sends a message to the debt collector explaining his right to submit an application to the state executive service for the payment of compensation, in which the details of the bank account for the transfer of funds must be indicated;

2) sends to the state executive service the original text and translation of the operative part of the final decision of the Court in the case against Ukraine, which recognized a violation of the Convention, the original text and translation of the operative part of the final decision of the Court regarding just satisfaction in the case against Ukraine, the original text and translation of the Court decision regarding amicable settlement in the case against Ukraine, the original text and translation of the Court's decision on approving the terms of the unilateral declaration in the case against Ukraine. The authenticity of the translation is certified by the Representation Body.

In order to ensure the state's compliance with the provisions of the Convention, the violation of which is established by the Court's decision, to ensure the elimination of systemic deficiencies that are the basis of the violation identified by the Court, as well as to eliminate the basis for submitting to the Court statements against Ukraine caused by a problem that was already the subject of consideration by the Court, general measures are taken (Article 13 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights»).

Measures of a general nature are measures aimed at eliminating the systemic problem and its root cause specified in the Court's decision, in particular:

1) making changes to the current legislation and the practice of its application;

2) making changes to administrative practice;

3) provision of legal examination of draft laws;

4) provision of professional training on the study of the Convention and the practice of the Court of prosecutors, lawyers, law enforcement officers, workers of immigration services, other categories of workers whose professional activity is related to law enforcement, as well as to keeping people in conditions of deprivation of liberty;

5) other measures determined - subject to supervision by the Committee of Ministers of the Council of Europe - by the respondent state in accordance with the Court's decision with the aim of ensuring the elimination of deficiencies of a systemic nature, the cessation of violations of the Convention caused by these deficiencies, and ensuring maximum compensation for the consequences of these violations.

Conclusions. The article argues that the state is a special subject of constitutional and legal responsibility. It is emphasized that the state bears constitutional and legal responsibility in the event

of non-fulfillment of its obligations, if as a result of this harm is caused to anyone.

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