

ABSTRACT

Gordiyuk S.A. Constitutional and legal regulation of spiritual and cultural relations in Ukraine. – Qualification scholarly paper: a manuscript.

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The dissertation is devoted to the formation of a holistic concept of constitutional and legal regulation of spiritual and cultural relations, which can become a doctrinal basis for relevant political and legal reforms in Ukraine.

The paper characterizes spiritual and cultural relations as a subject of constitutional and legal regulation in the general theoretical aspect, reveals the problems of interaction of the constitution and ideology in the aspect of regulation of spiritual and cultural relations. In addition, the author clarifies the features of the constitutional and legal regulation of spiritual and cultural relations in the aspect of human rights, summarizes the experience of regulating spiritual and cultural relations in foreign constitutional and legal practice. The constitutional principles of the spiritual and cultural system in Ukraine are determined, the current state and prospects of development of the constitutional and legal regulation of cultural rights and freedoms of man and citizen in Ukraine are established. The constitutional and legal status of civil society institutions in the spiritual and cultural sphere has been determined; outlines the constitutional and legal aspects that characterize the role of the state in the formation and development of spiritual and cultural relations in Ukraine.

The thesis that the spiritual and cultural subsystem of the social system is an important element of the general subject of constitutional and legal regulation is substantiated. The scope and tools of such regulation directly depend on the specifics of the political regime and political system of the state. In countries with pluralistic democracies, spiritual and cultural relations are the least regulated, while countries with political monism try to ensure full control over this sphere of society through constitutional and legal acts.

The peculiarities of the constitutional and legal regulation of the spiritual and cultural sphere are highlighted; these include: a) the heterogeneity of the cultural sphere as a subject of legal regulation, which necessitates the adoption of a significant number of regulations; b) the complexity of the cultural sphere as a subject of regulation, which necessitates the separation of powers between public authorities and local governments and divides national legislation in the field of culture at two levels of legal acts: national and local; c) the protectionist nature of the state policy in the field of culture, which is expressed in the state's solution of tasks to support national culture, dissemination of cultural values, support programs and initiatives for its development; d) largely declarative nature of legal acts adopted in the spiritual and cultural sphere, especially strategies and concepts; e) diversity of methods of legal regulation of spiritual and cultural relations.

It is noted that in a democratic society a person is self-sufficient and autonomous, and the inner world belongs only to him, so the task of the state and law is to create the most comfortable conditions for spiritual and cultural development of the individual. Instead, the state's attempts to subordinate the spiritual and cultural sphere to the interests of state-building are a manifestation of totalitarianism and lead to gross violations of human rights.

It has been shown that the basis of the constitutional and legal regulation of spiritual and cultural relations are both general principles of the principles of the constitutional order and special principles relating exclusively to this subsystem of the social order. Depending on the specifics of the political regime and political system for the special principles of the spiritual and cultural system is characterized by binary: ideological pluralism / ideological monism; freedom of creativity / partisanship of creativity; state polylingualism / state monolingualism; secular state / religious (clerical) state, etc.

Attention is drawn to the fact that the processes of European integration have led to the fact that the goal of EU policy in the spiritual and cultural sphere was the formation of European identity and bringing to the forefront of the common cultural heritage. Accordingly, Ukraine's movement towards the EU

includes the movement towards "Ukrainian Europeanness".

The thesis that the relationship between the constitution and ideology plays a key role in determining the constitutional principles of spiritual and cultural relations is substantiated. In particular, the choice of post-socialist countries of ways of socio-political and socio-economic development in practice also means ideological choice, adherence to one or another ideological direction, regardless of how much it is perceived or declared. It is proved that taking into account the specific conditions in Ukraine, the general principles and norms of the Constitution of Ukraine of 1996, which have programmatic and systemic significance, i.e. the principles of the constitutional order, should serve as the core, starting point for the creation of state ideology.

Since the mid-70's of the twentieth century, the main criterion for assessing public policy is the so-called "human dimension". In this context, the main criterion for assessing public policy in the spiritual and cultural sphere is to ensure the implementation of basic cultural rights of man and citizen. Culture and cultural rights must be exercised on the basis of individual rationality and freedom, and political structures must be responsible for preparing the ground on which individuals make their rational and free choices.

It is determined that the subject of constitutional and legal regulation of the spiritual and cultural system in modern states are three main groups of social relations: a) relations for the creation of material and spiritual values of culture; b) relations for the development of cultural achievements; c) relations concerning the protection of material and spiritual cultural values. Accordingly, the principles of spiritual and cultural system, basic cultural rights of man and citizen, principles of legal regulation in the field of education, science, culture, family relations, religion, principles of cultural heritage protection are enshrined at the level of basic laws. In pluralistic democracies, the constitutional and legal regulation of spiritual and cultural relations is limited and is based on the recognition of individual freedom in choosing forms and methods of spiritual and cultural self-expression, while states of political monism try to subordinate spiritual and cultural activity to

state building.

It is substantiated that the constitutional principles of the spiritual and cultural system in Ukraine are the principles of spiritual and cultural freedom of the individual, ideological diversity, secular state, state monolingualism, consolidation and national and cultural development of the Ukrainian people and support for foreign Ukrainians.

A detailed description of the system of cultural rights and freedoms of man and citizen under the current Constitution and current legislation of Ukraine is given. Attention is paid to the detail of basic cultural rights in the Law of Ukraine "On Culture".

According to the Constitution of Ukraine, the system of cultural rights of man and citizen in Ukraine includes the right to education (art. 53), freedom of literary, artistic, scientific and technical creativity (art. 54), the right to the results of their intellectual and creative activity (art. 54), on freedom of worldview and religion (art. 35), etc. In addition, according to art. 6 of the Law of Ukraine "On Culture" in the field of culture, citizens have the right to: freedom of creativity; free choice of activity in the field of culture, means and spheres of application of creative abilities, independent disposal of the work; conducting creative activities independently or using any form of mediation; creation of non-state cultural institutions of various areas of activity and organizational and legal forms; associations in creative unions, national-cultural societies, centers, foundations, associations, other public organizations in the field of culture; preservation, development, promotion of cultural, linguistic identity, traditions, customs and rituals; protection of intellectual property rights, including copyright and related rights; access to cultural values, cultural heritage and cultural assets; obtaining cultural and artistic education; other rights established by law. This list meets international human rights standards and provides ample opportunities for the development and realization of a person's creative potential in Ukraine.

The generalization of the current legislation on the status of civil society institutions in Ukraine gave grounds to assert that such institutions can influence

the spiritual and cultural system by appealing to public authorities and their officials and officials; to receive public information in the possession of subjects of power, other managers of public information; to participate in the development of draft regulations relating to the scope of their activities and important issues of state and public life, etc.

The conclusion is substantiated that during the years of independence in Ukraine there has been a significant change in the relationship between the state and the cultural sphere: from the model of the engineering state, typical of many Eastern European countries, to the prestigious educational model of developed Western and Central European countries. France). In the legislation it was manifested in the change of the "Fundamentals of Legislation on Culture" in 1992 to the Law of Ukraine "On Culture" in 2010.

Doctrinal approaches to the proper support of culture by the state have been improved; The need to make the transition to the French model of cultural support in Ukraine, focused on strong and centralized support of national culture by the state, as well as the introduction of an approach in Ukraine that combines the principles of political non-interference in decision-making and distribution of funds within the spiritual and cultural sphere , as well as decentralization and governance based on the advisory method.

Specific proposals for improving the legal regulation of spiritual and cultural relations in Ukraine have been formulated; in particular, it is proposed: a) to supplement the Constitution of Ukraine with a separate article on culture and its significance for the development of Ukrainian society; b) to supplement the list of basic cultural rights of a person and a citizen in the Constitution of Ukraine with the right of access to cultural values; c) in the Law of Ukraine "On Culture" to provide a legal definition of "cultural service", "minimum standards for providing cultural services", "cultural services center", the introduction of monitoring and evaluation of state cultural policy; d) the process of decentralization of public power to extend to the spiritual and cultural sphere.

Key words: constitutional order, foundations of the constitutional order, culture, spirituality, spiritual and cultural relations, cultural rights and freedoms of human and citizen.