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LEGAL PROHIBITION AS A METHOD OF LIMITING POLITICAL POWER

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The issue of legal prohibitions in national and European law has a pronounced interdisciplinary content. The modern Ukrainian environment, through which the legal values of European (Euro-Atlantic) and universal civilizations – principles, norms, institutions, sources of law, legal procedures, etc. – are "refracted" ("passed through"), is quite heterogeneous and contradictory, and this cannot but affect the peculiarities of Ukrainian law.

These problems include, in particular, the absence, unlike in many European countries, of an explicit enshrinement of the principle of proportionality in the Constitution of Ukraine. This refers to the balance, proportionality of public interests and the interests of an individual in case of need to restrict his or her rights; excessive restrictions on human rights; distortion of the essence of the restricted rights; failure to comply with ECHR judgments at the "home level"; examples of risks when both the purpose and the means are inadequate to the specific situation requiring such a restriction, i. e., in an acceptable ratio to the weight and importance of the fundamental right.

The author suggests the following areas of legal measures' effectiveness: bringing regulations in line with international standards; further improvement of legislation; bringing restrictions of different levels (interstate, national, municipal) into the system; social justification and scientific validity of their establishment and use; increasing the legality and effectiveness of restrictions in the exercise of law; creation of real guarantees of lawful implementation of restrictive measures; legal education and legal education for all segments of the population.

The prospects opened up for Ukraine in connection with its EU candidate status require not only further adaptation of Ukrainian legislation to the EU legal framework, continuation of reforms of the judicial system, law enforcement agencies, etc., but also a significant change in

legal awareness, legal mentality and legal thinking of both ordinary Ukrainian citizens and, above all, public officials, judges, law enforcement officers, etc. Without such a change, these prospects may not be realized.

It is stated that Ukraine's heroic struggle against the Russian military invasion for freedom and independence significantly accelerated the formation of a full-fledged modern political Ukrainian nation. The war proved that an excessive focus on regional differences based on the principle of "what difference does it make" whether certain regions profess Soviet, national Ukrainian, or European values is futile. Of course, we are not talking about forming the same views on historical events or contemporary problems for all people, let alone the same type of thinking, which is what all totalitarian regimes have sought. The point is that, despite all the regional differences that are inherent in almost all states, the basic, fundamental values that define national identity should be common to all regions of the state. Modern history knows of no examples of democratic and legal states being built along different civilizational vectors. This is typical only for empire states, whose fate ultimately ends in the same way – in catastrophe.

Keywords: law, citizen, directions, efficiency, legal prohibitions, legal influence, legal regulation, values.

Problem Statement. The prospects which have opened up for Ukraine in connection with its acquisition of the EU candidate status require not only further adaptation of Ukrainian legislation to the EU legal framework, continuation of reforms of the judicial system, law enforcement agencies, etc., but also a significant change in legal awareness, legal mentality and legal thinking of both ordinary citizens of Ukraine and, above all, public officials, judges, law enforcement officers, etc. Without such a change, these prospects may not be realized.

We are witnessing the convergence of the national legal system with generally accepted standards, but not all contradictions and deviations have been overcome. All of the above necessitates a comprehensive study, first and foremost, of the effectiveness of legal restrictions in accordance with European law.

The state of scientific research. The issue of human rights restrictions has always been a leading one. Prominent foreign and domestic researchers, analyzing the theoretical aspects of legal restrictions, emphasize the need for a systematic approach to this topic and its exceptional importance for both the state and citizens. Among the foreign scientific sources, it is necessary to highlight the scientific works of J. Buchanan, A. Wagner, S. Johnson, L. Ehrhardt, S. North, and R. Hall. Domestic scholars conduct their research in the field of restriction of citizens' rights using the best theoretical developments of the world legal science and practical experience in applying legal norms, adapting them to the current conditions of legal regulation. Among them are M. Karanyk, O. Petryshyn, V. Tuliakov, I. Pohribnyi, A. Tokarsska and others. Deepening of theoretical developments on the effectiveness of rights restriction in line with European standards requires consideration of the specifics of legal regulation in the context of combining the interests of the State and an individual citizen.

The purpose of the article is to determine the areas of legal prohibitions in the sphere of political power.

Summary of the main material. The analysis of scientific sources suggests that power is distinguished from other forms of social interaction by a specific feature of asymmetry. Power relations are usually about domination and subordination, influence and dependence, domination of the will of one subject over the will of another. Public political power is a kind of higher level of social power, in the sense that its power potential is much higher than, for example, family, party, religious, etc. power. However, in proportion to this potential, the tendency of this power to penetrate all spheres of human life, the desire for total control over society, increases significantly. Finally, in order for society to function and develop normally, there is

a need to limit the transgressive nature of public political power. And the main means of such restriction is legal prohibitions.

At the same time, the paradoxical situation is that legal prohibitions themselves are nothing more than state power, imperative requirements to refrain from specific behavior, so they should be considered as phenomena that fall within the scope of legal subordination. That is, the state power is called upon to limit the prohibition, which, in fact, comes from the state itself, and thus a specific mechanism of state self-restraint is actually activated. At the same time, the prohibition itself can be seen as a special way of limiting public political power. So, what is the legal nature of prohibition as a method of limiting public political power? What are the historical prerequisites for the emergence of this means of legal restriction? We will try to answer these questions. First of all, it should be noted that to establish a legal prohibition means to establish a legal obligation not to commit actions that are condemned by the state. Any duty, after all, is nothing more than "proper, necessary, required behavior from the point of view of law or morality". "A special group among general legal obligations is made up of legal prohibitions that establish the need to refrain from actions defined by legal acts. The social and legal purpose of legal prohibitions is to protect common interests, benefits, values, as well as to protect life, health, honor and dignity of the individual". According to L. G. Udovyka, prohibitions are the most convenient preventive measure by which effective protection of public relations is achieved [1, p. 34].

Considering the historical background of the phenomenon of "legal prohibition", the author considers it necessary to highlight a number of specific aspects of this issue. First of all, it is necessary to give a general description of the prohibition as a social phenomenon, justifying the conclusion that "prohibitions" appear in the period of pre-State development of society.

Indeed, from the moment of its formation, a "rational person" in the course of his or her life is continuously confronted with various prohibitions that regulate the generally binding rules of behavior. The authors of the collective monograph quite rightly note that "a natural (i. e., pre-state) society is capable of producing rules, customs, norms, values that exist in it and, ultimately, are its components" [2, p. 56]. In a pre-state society, a person can dispose of himself or herself only within the within the limits established by the relevant prohibitions, the main of which is the prohibition of violation of the rights of other people and, ultimately, the rights belonging to the community as a whole. This prohibition is a "law of nature" that "governs the natural state and is binding on everyone" [3, p. 13]. The prominent English thinker J. Locke considered the natural law as the basis of a strong order in human relations. A society in which individuals live in accordance with the "natural law" is in a state of peace of goodwill and mutual assistance. This concept of the "state of nature" by J. Locke is opposed to the state of "war of all against all", which was defended by another famous English philosopher T. Hobbes, considering the state of "war of all against all". Hobbes, who considered the pre-state state of human society as a period of "legal lawlessness", in which the rights of individuals were not violated by any prohibitions, which leads to their widespread violation (because, not knowing the limits of a particular right, it is impossible to determine when the right of one ends and the right of another begins) and, as a result, to a general civil war [4, p. 47].

Of course, when considering the Lockean concept of the state of nature, one should take into account that people are in a position of common peace and mutual assistance not because they have any particularly warm feelings for each other. The absence of mutual claims is primarily due to the fact that the human community in its formative years was united by a single global goal of physical survival. It is known that humans are rather poorly adapted to life in the wild. Not possessing the strength of predators, the speed of herbivores, or the ability to mimic insects, man could survive only if the efforts of individuals were combined. Under such circumstances, man, in the truest sense of the term, is a "collective animal" , since his very existence depends on whether he is part of a community of his own kind or not. A person who was in a non-personal collective had no prerequisites for distinguishing the concept of individuality, he or she did not perceive himself or herself as an individual (therefore, in this situation, we cannot talk about the existence of individual rights and obligations).

History shows that for a long period of time, humanity used the concept of plurality, and what we now perceive as singularity was part of the same plurality. Due to this basic feature of thinking, primitive man identifies his leader with the entire collective of people and considers each member of this impersonal human group equal to the other, as well as to all of them. It is the collectivity of human existence, the absence of a personal attitude to an individual and, as a result, the impossibility of subjective rights and freedoms that allow us to conclude that in this period of development, human society is a model of a society of peace and mutual consent, since it is impossible to violate what does not really exist [5, p. 45].

At the same time, it can be concluded that it was during this period of human development that certain rules were formed that later played the role of prerequisites for legal prohibitions. First of all, these were taboo rules, which were a kind of "penal prohibitions" and did not provide any explanation. Their effectiveness was determined by the common opinion of relatives. The peculiarities of taboos were indisputability and general obligation, and the most terrible punishment for a violator was ostracism (expulsion from the family), practically equivalent to the death penalty, since a person expelled from the family could not be accepted back by his relatives, and even more so the possibility of his joining another family was excluded. Taboos already contained the basic principles characteristic of prohibitions, such as: general obligation; restriction and, therefore, narrowing of absolute freedom; application of sanctions in case of violation of the rules contained in the taboo. Taboos received their metaphorical expression in the form of myths passed down from generation to generation and covering all aspects of primitive man's life without exception.

It should be noted that the myth or imagery of primitive man is involuntary. Myth is not a genre, as a story, for example, is. A myth is created involuntarily and contains a figurative representation of reality in the form of several metaphors, where there is no logical, formal-logical casualness (in the modern sense), where thing, space and time are understood in an undivided and concrete way, and where man and the world are subjectively united. This inseparability determines the absence in myths (at least in the early stages of myth-making) of the separation of morality and law, but this circumstance is especially important, as myths already have imagery (reflecting the struggle and endless interchangeability of heaven and hell). Subsequently, it is transformed into legal and ethical concepts (law and lawlessness; bad and good; evil and good, etc.).

The prohibitions-taboos contained in myths were fundamentally different from prohibitions in the modern sense of the term; taboos (as noted earlier) did not contain a detailed explanation of why and for what purpose they existed.

In addition, the transmission of myths orally over a long period of time inevitably led to a distortion of the information contained in them, which usually deprived the prohibition of its elementary meaning. These, as well as other circumstances, certainly complicated the use of taboos as effective social regulators, requiring their radical revision. In turn, progress in the use of prohibitions was impossible without fundamental changes in the sphere of human dormitory. The latter were primarily related to the identification of the individual as an independent subject of social relations.

The overcoming of the next stage of human development, characterized primarily by the decomposition of kinship relations, however, does not mean the immediate beginning of Hobbes's "war of all against all" . Peace and mutual understanding have been preserved in human society for some time, even after the problem of immediate survival has been "solved". We tend to explain this situation by a certain habit developed by people during the previous period. For example, let's imagine a situation that would be possible as a result of the instantaneous disappearance of the institution of the state and, above all, the prohibitions associated with this institution that determine the nature of the generally binding rules of behavior. People will (mostly) continue their life activities in accordance with the stereotypes that have developed.

However, in each subsequent generation, these stereotypes will be weaker than in the previous one and, therefore, the influence of objective natural regulators will be increasingly felt. It is clear that J. Locke, justifying his point of view on the state of nature, was referring to this "secondary" stage of human society,

when, on the one hand, it is already possible to speak of the existence of subjective interests, and on the other hand, the stereotype developed by previous generations still allows to oppose the interests of some people to the interests of others. During this period, people carry out their activities in accordance with the law of nature, which limits absolute freedom by establishing a situation in which "the right of one should not violate the right of another" [6, p. 59]. Human behavior is determined, on the one hand, by natural inclinations and desires, and, on the other hand, by moral motives and natural law. "God gave man reason to guide his actions, granted him freedom of will and freedom of action, accordingly related, within the limits of the law to which he must obey" [7, p. 70]. A person has the right to use any means to ensure his or her safety. However, while protecting his/her safety, a person should not violate the rights of others. Only what is fair is what contributes to the preservation of not only an individual but also the entire human community. One of the basic requirements of the natural law is the need to ensure peace and security for all mankind. "Hence, each of us, since he is obliged to preserve himself and not to leave his position arbitrarily, is obliged for the same reason, when his life is not threatened, to preserve the rest of humanity" [8, p. 6]. Thus, it should be recognized that the law of nature defines a prohibition that does not allow a person to do whatever he or she wishes.

At the same time, asserting the need for people to comply with the prohibitions established by the "law of nature", one cannot but assume the possibility of violating the natural law and a person's refusal to "follow the dictates of reason" [9, p. 27]. This situation becomes possible for various reasons. First of all, it should be recognized that although the prohibitions established by the natural law are clear to all rational beings, people themselves are often vulnerable where their interests are affected. Furthermore, since the natural law itself is not innate, and its cognition requires experience and some mental work, it turns out that people do not comply with the prohibitions because "they do not know the law, because they have not studied it and are not inclined to recognize it as a law to which they must obey in appropriate cases" [10, p. 20]. Great inconveniences arise in the state of nature due to the fact that here everyone is an enforcer of the natural law and people are judges in their own cases. Self-love makes people biased against themselves and their friends, and passion and vindictiveness can go very far in punishing others. As a result, it should be recognized that although in the natural state a person is the absolute master of his or her own personality and will, the exercise of rights is very unreliable, as it is threatened by constant encroachment by other individuals. Depriving a person of his or her main values (life, liberty and property) or even attempting to do so is a violation of the law of nature and human reason (as a conscious natural law), i. e., a crime against humanity.

The most effective way to solve this problem, according to most scholars, is to form a state. The task of the state at the time of its formation is, first of all, to legally regulate socio-political relations in order to protect and defend them.

This process is carried out, on the one hand, by giving legal force to natural rights, freedoms and duties of people (the basis of the distinction in pre-state society was "natural prohibitions"), and, on the other hand, by means of law-making activities of the state itself. Now, the state (and not each individual) acts as a guarantor of observance of rights and freedoms (marked by appropriate prohibitions).

The consolidation of people on the territory of the state and their acquisition of a specific legal status of citizenship (nationality) means that from now on they are all under the jurisdiction of the state, so that mandatory norms of behavior apply to all citizens without exception, while ignorance of the law (prohibitions) cannot be considered as a circumstance that excludes guilt for its violation.

This circumstance determines the emergence of prohibition as a legal method by which the mechanism of legal regulation is implemented. It is the conditionality of the prohibition by the relevant rules of law, i.e. its legal justification, that fundamentally distinguishes a legal prohibition from a social prohibition (which was used for regulation in the pre-state period), which is always justified from the legal point of view (for example, a prohibition as a taboo).

As a specific means of behavioral activity of the subjects of legal relations, legal prohibition restricts both subjective rights (opportunities) of individual subjects and transgressive trends in the structure of state power. The fact is that any power (and especially the state power) does not know (or pretends not to know)

its own limits (borders) and always seeks unlimited expansion of the power space, which usually leads to the restriction of individual interests. “Every man” , wrote B. Russell, “is originally endowed with two related but not identical passions: the desire for power and glory. Both passions are insatiable and endless” [11, p. 86]. That is why the government often seeks to expand (by violating the rights and freedoms of individuals) its boundaries.

What to do? What can we do to counteract this passion and this tendency to unlimited expansion? What levers can be used to limit state power?

Conclusion. A legal prohibition can and should be a means of organizing and limiting state power. Instead, legal prohibition appears as the antithesis of state arbitrariness as a barrier to its path. Since political power is prone to various abuses, it needs reliable legal boundaries that limit and restrain such tendencies and create an obstacle to the unlawful abuse of power, which leads to the violation of human and civil rights and freedoms. Legal prohibitions are necessary precisely to ensure that the shortcomings of the person exercising power do not turn into shortcomings of the state power. That is why it should be noted that legal prohibitions do not limit the actual managerial influence of state structures on a person, but only actions that are harmful to society and unreasonably restrict the interests of citizens.

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ПРАВОВА ЗАБОРОНА ЯК МЕТОД ОБМЕЖЕННЯ ПОЛІТИЧНОЇ ВЛАДИ

Проблематика правових заборон у національному та європейському праві має яскраво виражений міждисциплінарний контент. Сучасне українське середовище, крізь призму якого “переломлюються” (“пропускаються”) правові цінності європейської (євроатлантичної) і загальнолюдської цивілізацій – принципи, норми, інститути, джерела права, правові процедури тощо, доволі неоднорідне й суперечливе, що не може не відбиватися на особливостях українського права.

Серед цих проблем треба назвати, зокрема, брак, на відміну від багатьох європейських країн, прямого закріплення принципу пропорційності у Конституції України. Йдеться про збалансованість, співмірність публічних інтересів та інтересів окремої особи в разі потреби в обмеженні її прав; надмірність обмежень прав людини; спотворення суті обмежуваних прав; невиконання рішень ЄСПЛ на “домашньому рівні”; приклади ризиків, коли і мета і засоби виявляються неадекватними конкретній ситуації, що потребує такого обмеження, тобто перебуває у прийнятному співвідношенні до ваги і значення основного права.

Запропоновано напрями ефективності правових заборон: погодження нормативних актів з міжнародними стандартами; подальше вдосконалення законодавства; приведення в систему обмежень різного рівня (міждержавного, загальнодержавного, муніципального); соціальна обумовленість і наукова обґрунтованість встановлення та використання; підвищення законності та дієвості обмежень під час реалізації права; створення реальних гарантій правомірної реалізації обмежувальних заходів; правове виховання і правовий всеобуч для усіх верств населення.

Перспективи, що відкрилися перед Україною у зв'язку з набуттям нею статусу кандидата в члени ЄС, потребують не тільки подальшої адаптації законодавства України до законодавчої бази ЄС, продовження реформ судової системи, правоохоронних органів тощо, а й істотної зміни правосвідомості, правової ментальності та юридичного мислення, як звичайних громадян України, так і передусім державних посадовців, суддів, працівників правоохоронних органів тощо. Без такої зміни вказані перспективи можуть залишитися нереалізованими.

Констатовано, що героїчна боротьба України проти російської військової навали за свободу й незалежність значно прискорила формування повноцінної сучасної політичної української нації. Війна довела, що надмірна орієнтація на регіональні відмінності за принципом, "яка різниця", які цінності ті чи інші регіони сповідують – радянські, національні українські чи європейські – безперспективна. Звісно, не йдеться про формування однакових для всіх людей поглядів на історичні події чи проблеми сучасності, тим паче однотипного мислення, до чого прагнули всі тоталітарні режими. Йдеться про те, що за всіх регіональних відмінностей, що властиві майже усім державам, базові, фундаментальні цінності, які визначають національну ідентичність, для всіх регіонів держави мають бути спільними. Сучасній історії невідомі приклади, коли б демократичні та правові держави будувалися за різнонаправленими цивілізаційними векторами. Це притаманне хіба що державам-імперіям, доля яких врешті завершується однаково – катастрофою.

Ключові слова: право, громадянин, напрями, ефективність, правові заборони, правовий вплив,правове регулювання, цінності.