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Doctrine of European common democratic values by prof. L. Yuzkov: Ukrainian history and modernity*

Abstract. The article reveals the content of the doctrine of European common democratic values (dignity and human rights, the rule of law and constitutional democracy) of the first Chairman of the Constitutional Court of Ukraine Prof. L. Yuzkov as well as the role of this doctrine in the development of the first official draft of the Constitution of Ukraine of 1992 and its further development in the effective Constitution of Ukraine, the practice of its implementation, etc.

Keywords: the doctrine of European common democratic values of Prof. L. Yuzkov, the draft Constitution of Ukraine of 1992, the Constitution of Ukraine in the editions of 1996, 2004 and 2014, dignity and human rights, the rule of law, constitutional democracy

Introduction

Sometimes people think that the ideology of European common democratic values, i.e. dignity and human rights, the rule of law and constitutional democracy, appeared in Ukraine after the Revolution of Dignity (winter 2013-2014) or after the signing of the Association Agreement between Ukraine and the European Union (hereinafter – EU) in 2014 (hereinafter referred to as the Agreement of 2014, which entered into force in 2017). But this is not entirely true, although after these events this ideology has received quite a wide support in Ukrainian society.

The history of formation and development of the specified ideology in Ukraine is much deeper and it began literally from the first years of its state independence, declared in 1991. In this story an important role (if not a key role) by right belongs to the prof. L. Yuzkov (1938-1995) – an intellectual, scientist, state and public figure¹, who was among the first in Ukraine, who proved and pledged the European common democratic values in the constitutional texts of the years 1990-1995.

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¹ Prof. L. Yuzkov was a member of the two Constitutional Commissions of the Verkhovna Rada of Ukraine in 1990-1994 and 1994-1995, the Chairman of the Constitutional Court of Ukraine (1992-1995), a member of the State Duma of Ukraine (1992), a member of the Venice Commission (European Commission for Democracy through Law) in 1993-1995, and so on.

We are talking about such extremely important documents as the Declaration on the State Sovereignty of Ukraine of July 16th, 1990, the Law on Amendments to the Constitution of Ukraine (revised in 1978) of October 24th, 1990, the Concept of the new Constitution of Ukraine of 1991, the first official draft of the Constitution of Ukraine of the year 1992 (with additions and changes of 1993), the draft Constitutional agreement between the Verkhovna Rada of Ukraine and the President of Ukraine of the year 1995. He accomplished this work in close cooperation with a group of Ukrainian scientists who stood on state, constitutional-democratic positions.

The Doctrine of European common democratic values by prof. L. Yuzkov, first of all, found its complete reflection in the draft Constitution of Ukraine of the year 1992², which, in fact, became a theoretical and applied basis of the Constitution of Ukraine adopted in 1996, as well as its editions in years 2004 and 2014. As historical experience shows, the Constitution of Ukraine created on the basis of this doctrine has only one drawback: it is not carried out and is observed by the power structures or is carried out and adheres to them selectively. But this drawback is poorly captured by the Ukrainian people, who do not fully understand that in order to implement these values, it is necessary to demand from the government the implementation and compliance with the entire Constitution of Ukraine.

Therefore, problems of the implementation of the doctrine of European common democratic values by prof. L. Yuzkov in Ukraine are of acutely relevant and social nature and require their detailed consideration. In this article, we attempt to deal with only some of its problems.

The doctrine of the European common democratic values by prof. L. Yuzkov can be divided into three parts: the doctrine of constitutional democracy, the doctrine of dignity and human rights, and the doctrine of the rule of law. Each of these doctrines has its own peculiarities and place in the system of his views on these values.

1. The doctrine of constitutional democracy

This part of the Doctrine of European common democratic values by prof. L. Yuzkov is particularly important for the formation of a civil society, which has carried out two democratic revolutions, i.e. the Orange Revolution (in 2004) and the Revolution of Dignity, which significantly undermined the monopoly on the power of the Ukrainian political class. Unfortunately, these two revolutions did

² See: V.O. Korolyuk, *Proponent of a new and righteous law (strokes to Leonid Yuzkov's portrait on the background of the historical era)*, V.O. Korolyuk; general edition and front word – V.M. Kampo, K. Yurinkom-Inter, 2014, p. 143-233 (in Ukr. language).

not lead to a complete reset of state power, but they strengthened this society with a vast experience in the fight against tyranny and unfreedom.

It should be mentioned that Ukraine is already making its fourth attempt to introduce constitutional democracy. For the first time it was after declaration of country independence in 1991; the second time was in 1996, when the Constitution of Ukraine of 1996 was adopted; the third time took place after the Orange Revolution and the fourth time was after the Revolution of Dignity. Each of these attempts is very important for the Ukrainian people, who thus showed themselves and the rest of the world their confidence that they would still build a constitutional democracy.

Prof. L. Yuzkov was deeply aware of the importance of the role of constitutional democracy, which, in fact, had to bring Ukraine to a new civilized level, previously unknown to society. The historical experience of constitutional democracy in the Ukrainian lands, either as a part of the Russian Empire (1906-1917), or the Austro-Hungarian Empire (1860-1918), or the interwar Czechoslovak Republic (Subcarpathian Rus/Carpathian Ukraine 1919-1939), was irretrievably lost later over the years of Soviet power.

In fact, in the years 1990-1995, the development of constitutional democracy in Ukraine had to start from scratch. Therefore, prof. L. Yuzkov in his doctrine proceeded from the classical understanding of constitutional democracy, i.e. the power of the people and for the people, which performs it on the basis and within the limits of the Constitution and laws of Ukraine, in the forms of direct, electoral and parliamentary democracy. Local democracy has been isolated in a separate form, performed by the people through territorial communities.

According to prof. L. Yuzkov, people in Ukraine must have a constituent authority, i.e. the right to change the constitutional system and the right to resist anyone who tries to unlawfully eliminate the democratic constitutional system (Article 9 of the draft Constitution of Ukraine, 1992). Moreover, people must have legislative authority for adoption of laws at the all-Ukrainian referendum, etc. Describing constitutional democracy, the scientist-innovator proceeded from the following doctrinal provisions:

- the bearer of sovereignty and the only source of power is the people, i.e. citizens of Ukraine of all nationalities;
- people's power subordinates the activities of the state and its bodies to the interests of a person, to all social groups of society;
- the state activities, aimed at satisfying the interests of only a separate part of the people, are unconstitutional;
- the people perform their power on the basis of the Constitution directly and through the system of state bodies and local self-government bodies;
- any political party, public organization or other grouping can not act on behalf of

the entire Ukrainian people and assign the right to perform state power without its mandate³.

The indicated prof. L. Yuzkov's doctrinal provisions were greatly reflected in the draft Constitution of Ukraine in 1992. In Section V of this project "State Power", it was offered to consolidate the following provisions:

1. Article 3: only the parliament elected by the Ukrainian people can act on behalf of them;
2. Article 114: the state authority is performed by the people on behalf of citizens of Ukraine who have the right to vote;
3. Article 115: the people perform state power through a national vote (referendum), elections, as well as through a system of state authorities;
4. Article 116: an all-Ukrainian referendum is a constitutional way of accepting laws and other state decisions directly by the people;
5. Article 118: elections to the National Assembly of Ukraine and elections of the President of Ukraine are held periodically and on the principle of universal, equal and direct electoral law, by ballot voting and by free and equal nomination of candidates.

In addition, Article 224 of the 1992 Constitution stipulated that local self-government as a form of democracy is carried out by the population of cities, villages and territorial communities directly or through elected bodies.

The transition from totalitarian socialism to the constitutional democracy and the constitutional state was a keynote of social and political development of Ukraine in 1990-1995. However, this transition happened very slowly due to its inhibition by ex-communists, who hoped to return the Soviet power after the declaration of independence of Ukraine. That is on the one hand.

And on the other hand, transition of society from totalitarian socialism to the constitutional democracy in Ukraine was constrained by too radical forms of dismantling of totalitarian system by the President of Russia B. Yeltsin (1931-2007). The latter even resorted to a shooting at the Russian parliament that opposed to his state policy, and after that B. Yeltsin held a constitutional referendum, which adopted the current Basic Law of the country in 1993.

Ukraine, introduction of the constitutional democracy happened in less dramatic forms as there was a certain historical compromise between the old and new government, which partially still works. The main institutes of the constitutional democracy were quickly enough enshrined in the Constitution and laws of

³ See: *Problems of Contemporary Ukrainian Constitutionalism. Collection of scientific works. In honor of the first Chairman of the Constitutional Court of Ukraine*, prof. Leonid Yuzkov, Constitutional Court of Ukraine, Acad. right. of sciences of Ukraine, Gen. Ed. A. Stryzhak, V. Tatsii, edit. V. Bryntsev, V. Kampo, P. Stetsiuk, K., 2008, p. 19 (in Ukr. language).

Ukraine of that times, but in practice they were introduced in the Soviet style, i.e. fictitiously. First of all, it happened because of the lack of knowledge and skills of introduction of the European common democratic values, and because of elementary constitutional nihilism of the state apparatus.

In order to make a transition from totalitarian socialism to the constitutional democracy in Ukraine, it was necessary to reform the constitutional system very quickly. So it was necessary to involve the people in this process, which is the main subject of the constitutional legal relationship, to teach them to live in a new way. Moreover, it was not about its formal attraction, but about actual involvement, as it had to play a key role in formation of the constitutional democracy.

However, the constitutional democracy exactly (and not some other democracy) was too complicated both for understanding, and for its realization by the Ukrainian political class. And it is not surprising. Because a way to understanding, and then to the realization of the principles of democracy, lies through the idea of complexity and closely related concept of social complexity, according to the idea of D. Dzolo, the Italian researcher (born in 1936)⁴.

It is known that the complexity is a structural element of pluralistic democracy. Such democracy was enshrined in the draft constitution of Ukraine in 1992: social life in Ukraine had to be based on the principles of political, economic and ideological pluralism (Article 6). However, today Ukraine has actually stopped at the level of transitional to the constitutional democracy, which is still called hybridsometimes⁵.

The Ukrainian political class has actually ignored the idea of complexity for transition to the constitutional democracy and still continues to ignore. Since the parliamentary and presidential elections of the year 1994, it has introduced democracy, which guarantees legitimacy of power and an opportunity to govern irrespective of the Constitution and laws of Ukraine, leaning on a shadow economy and shadow politics.

The state-building activity of prof. L. Yuzkov in 1990-1995 fell on the period when there was a transition from totalitarian system to the constitutional democracy in the countries of the former communistic block. The Baltic countries (Estonia, Latvia and Lithuania), as well as the postcommunist countries of Central and Eastern Europe, carried out this transition within several years, mainly because they acted purposefully and on the basis of national consensus.

⁴ See: D. Dzolo, *Democracy and complexity. Realistic Approach*, transl. from Eng. by A. Kalinin, N. Edelman, M. Yusym, Publ. House of the State University – Higher School of Economics, 2010, p. 26 and the next ones (in Ukr. language).

⁵ See: *In the rating of democracies, Ukraine was attributed to the "hybrid regime"*, <https://www.pravda.com.ua/news/2018/02/4/7170541/> (in Ukr. language).

In Ukraine, as in some other post-Soviet republics, this transition was delayed for decades. However, after the Orange Revolution, there were qualitative changes in this issue and, together with Georgia and Moldova, it was considered by experts as being really moving towards constitutional democracy.

Unlike authoritarian countries, such as Belarus, Kazakhstan or Russia, in which constitutional democracy is not mentioned at all. Other political doctrines are dominated there. According to them, economic development of the country is more important than the establishment of constitutional democracy. The confirmation of this doctrine is, for example, constitutional changes, which take place in Kazakhstan: in order to attract foreign investors into its constitution, amendments have been made that involve the usage of the British legal system in the country, in particular⁶. But the development of constitutional democracy is not discussed there.

Ukraine also has some political forces that are ready to implement such doctrines, but the people themselves are mostly brought up differently. They can not yield to freedom and democracy for the sake of social package and voluntary slavery, because their whole thousand-year history is marked by the struggle for European values. That is why the doctrine of constitutional democracy by prof. L. Yuzkov has deep social roots.

The problem of the correlation of market economy, political freedom and constitutional democracy⁷ is one of the most difficult for transitional democracies. First of all, the ruling oligarchic regimes in these countries counteract economic and political competition, as well as the limitation of state power on the basis of the Constitution and laws.

The doctrine of the constitutional democracy by prof. L. Yuzkov prompts that in the countries with transitional democracy, first of all, it is necessary to transform the unwritten status of oligarchs into usual category of wealthy people, who do not break the civilized relations between market economy and the constitutional democracy. This transformation has to exclude any restrictions of these people in a right of ownership of private property, in the right for occupation an entrepreneurial activity, in other constitutional rights and freedoms and so forth.

It is obvious that the former oligarchs as citizens have to serve to general welfare of the country in a civilized way with their wealth as it is accepted in developed countries and to receive a share of profit for it. Certain restrictions for them may relate only to unconstitutional privileges that now “allow” them today to control

⁶ N. Pushkaruk, *Why Ukrainian oligarchs are being sued in London? Former Supreme Judge of England and Wales, Lord Wolfe was appointed the head of a new Arbitration Tribunal in Kazakhstan*, Den, No. 21, February 7th, 2018, p. 3 (in Ukr. language).

⁷ Formoredetails, check: M. Friedman, *Capitalism and Freedom*, M. Friedman, R. Friedman, transl. from Eng. by N. Rogachevska, K., Nash format, 2017, p. 17-46 (in Ukr. language).

parliamentary fractions, the ministries, regional public administrations, political parties, public organizations, media, etc.

But also the state should not promote oligarchs. In this regard, it would be necessary to stop public financing, in particular, of oligarchical parliamentary parties and to give them time to make reforms. The saved funds could be temporarily allocated for support of 3-5 non-parliamentary political parties, which are marked with the embodiment of the principles of the constitutional democracy and other European democratic values, politics of real execution and observance of the Constitution of Ukraine.

As according to the doctrine of the constitutional democracy by prof. L. Yuzkov a prerequisite for any social and political transformation is the Constitution of Ukraine, so it is necessary to apply its provisions to transformation of the local oligarkhat to a more civilized category of very wealthy people. In particular, what does the principle establish, according to which the property obliges; the latter cannot be used to the detriment of the person and society (Part 3 of Article 13 of the Constitution of Ukraine). Providing implementation and observance of this principle is an unconditional liability of parliament, President and government of Ukraine.

Of course, from the standpoint of the present, not all provisions of the doctrine of constitutional democracy by prof. L. Yuzkov remain relevant. For example, the idea of withdrawing members of the National Assembly (lower chamber of parliament) or the President of Ukraine was not reflected in the 1996 Constitution of Ukraine. An attempt to apply the institution of the parliamentary recall in 1992-1993 proved to be ineffective, and this left its mark on the future of this institution.

Similarly, the idea of regional self-government (like self-governing regions in Italy), which was proposed in the Constitution of the year 1992, has lost its relevance. This idea eventually became dangerous for Ukraine, primarily, because of the weakness of the central government, which relied more on oligarchic clans than on the people.

Thus, an attempt to introduce regional self-government system in 1994 led to the imbalance in the relationship between the center and the regions. Elected in the same year, the President of Ukraine L. Kuchma (born in 1938) immediately centralized the management of the regions and thereby ceased separatist sentiments among some of the local elites.

In the Constitution of Ukraine of the year 1996, the provision on regional self-government system is obviously absent. The Italian example was ineffective for Ukraine and in Italy itself the provisions of its Constitution of the year 1947 on regional self-government system were not implemented for 25 years. If Ukraine once has a chance to have regional self-government system, then it will not defi-

nately happen right now, because Russia is armed with aggression in the Ukrainian Donbass, moreover, the Ukrainian Crimea has been annexed by it.

However, in general, the doctrine of constitutional democracy by prof. L. Yuzkov remains relevant, because its fundamental provisions, unfortunately, have not become a real practice yet. Only after the Revolution of Dignity, the people began to realize that there is Article 5 of the current Constitution of Ukraine, according to which the people are the source of power in the country.

Here it is necessary to mention once again an important idea of the doctrine of the constitutional democracy by prof. L. Yuzkov such as the right of the people for resistance to authoritarianism. According to Article 9 of the draft Constitution of Ukraine in 1992, citizens of Ukraine had to have the right to resist anyone, who attempts to liquidate illegally a democratic constitutional system of Ukraine, if other means cannot be used.

The Ukrainian people used this unwritten norm of the absolute lawtwice in the years of independence, i.e. during the Orange revolution and Revolution of Dignity. Actually, it became a norm of “living” Constitution of Ukraine that does not need formal fixing as it is legitimized by the constitutional culture of the people. In fact, in this question Ukrainians rose to the level of Americans who, however, did so at the end of the 18th century in the Declaration of Independence in 1775.

However, the lack of the constitutional culture and constitutional sense of justice quite often “get carried away” the representatives of the Ukrainian public, who undertake to carry out the principle of people’s sovereignty, on the path to populism and violations of the Constitution and laws of Ukraine. There is the only way out of this situation: the state has to teach people the principles of constitutional democracy, so we, at least, need the Constitutional Enlightenment Act.

Constitutionally well-mannered civil society is an important component of the constitutional democracy. However, the issue of separate, quite independent constitutional and administrative responsibility for violation of norms and the principles of this democracy is not less important for appropriate functioning of the latter. In particular, by officials of public authorities and local government bodies, which allow such violations.

Prof. L. Yuzkov was hundred times right, when he pointed out to danger of the anticonstitutional activity of the state, directed to satisfaction of interests only of a separate amount of people, in particular, of the Ukrainian political class. Therefore, for the benefit of this class, it necessary to get rid of monopoly for the power faster, otherwise nobody is insured from the new Maidans, i.e. Revolutions.

The Ukrainian society is ready for the change of rules of a politician game, as mistrust to all political institutes, including opposition, is just catastrophic. The authorities in power, in particular, the prime minister of Ukraine V. Groysman,

suggested to pass to open regional lists of candidates for People's Deputies of Ukraine at parliamentary elections⁸, but the majority of the Ukrainian political class does not agree with him, because this political class wants to control electoral process in the manual mode.

However, at the same time, the issue whether future People's Deputies will begin to carry out and observe the Constitution and laws of Ukraine systemically is absolutely missed in discussions about elections. Actually, Ukraine needs a new type of the deputies-constitutionalists, who are really ready to defend, first of all, the Constitution of Ukraine and to begin construction of the state on its firm base.

Prof. L. Yuzkov was developing the ideas of the constitutional democracy and the constitutional state just because it is necessary for the Constitution of Ukraine to enter the hearts and souls of the Ukrainian political class. Ukraine needs a state-house with a solid foundation in the face of the Constitution, and not a dugout, which this class has constructed, of course, not for itself but for the people, through the constitutional nihilism.

In order for the state to be a house, not a dugout, laws on the implementation and observance of the Constitution of Ukraine by executive bodies, judicial authorities, local self-government bodies, prosecutor's offices, internal affairs bodies, etc. are needed. The current laws on these bodies, in particular, on the Cabinet of Ministers of Ukraine, on local state administrations, on local self-government, etc., mainly involve the formal aspects of their organization and activities.

While the country needs another type of law: not about formal state institutions, their status and powers, but about the constitutional mechanisms of their implementation of the Constitution of Ukraine on the basis of European common democratic values. Only new laws on the implementation and adherence of the Basic Law of the country will help the country to overcome the crisis situation that has been developed today in the activities of state institutions.

Consequently, there is a need for a deep constitutionalization of the activities of all power structures in Ukraine, and therefore, of the branches of legislation that ensure their activities, since this is the main path to constitutional democracy. According to some authors, this process went beyond the scope of the domestic political activity of state authorities and extends to Ukraine's relations with the EU⁹. In essence, the concept of constitutionalization of power activities is worthy of continuation and confirmation of the effectiveness of the doctrine by prof. L. Yuzkov about constitutional democracy and a constitutional state.

⁸ See: R. Romanyuk, *Founding fathers, or Three "bows" of Groisman to Poroshenko*, <https://www.pravda.com.ua/columns/2018/02/9/7171147/> (in Ukr. language).

⁹ See: O.V. Streltsova, *Constitutionalization of the process of association of Ukraine with the European Union: theory and practice: monograph*, ed. O.V. Martselyuk, K., Alerta, 2017, 532 p. (in Ukr. language).

Today it is worth thinking about transforming the Constitutional commission established in 2015 by the President of Ukraine P. Poroshenko (born in 1965) into the Constant Constitutional Council (CCC), with the participation of highly qualified constitutionalists, i.e. economists, historians, political scientists, sociologists, lawyers (various specialties), etc. Some time ago, the State Duma of Ukraine was a legislative executive body of the time, similar to the CCC, and, incidentally, professor L. Yuzkov was its Member.

According to the idea, the CCC should help the supreme bodies of state power, i.e. the Parliament, the President and the Government, as well as Civil society, to ensure the implementation of the Constitution of Ukraine. But in essence to accelerate (because time was lost) the transformation of Ukraine from transitional to constitutional democracy.

It should be mentioned that the creation of this Constitutional Commission by the President of Ukraine, as a special subsidiary body under the head of the state, raises some doubts on its constitutionality and legitimacy. The same can be said about the similar bodies formed by the previous Presidents – the National Constitutional Council in 2007 and the Constitutional Assembly in 2012.

As one may know, in 1990 and 1994, the Constitutional Commissions, in which prof. L. Yuzkov was working, were created by the Parliament, since it was believed that it was the subject of the constituent power, along with the people, it had to form them. The President of Ukraine in the sphere of the constituent power has only procedural powers to ensure the conditions for its implementation, and therefore there are certain doubts that he may create subsidiary bodies for the reform of the constitutional provisions. It is obvious that the issue of such bodies should fall within the exclusive competence of the Parliament.

Despite the historical trials that fall on the fate of modern Ukraine, it, as it was in the times of state-building activity of prof. L. Yuzkov, does not decline the movement to constitutional democracy¹⁰. Civil society and the international community are closely monitoring the fact that democratic processes in it not only did not stop, but also evolved further.

2. The doctrine of dignity and human rights

A special place in the constitutional doctrine by prof. L. Yuzkov is occupied by such values as dignity and human rights. He considered that “in the center of the organization and functioning of the state, the Constitution has to put a Person as a supreme social value, his freedom, rights and dignity, material and spiritual ben-

¹⁰ See: EU Ambassador: Ukraine will not return to autocracy, it's impossible, <https://www.eu-rointegration.com.ua/news/2018/02/5/7077112/> (in Ukr. language).

efits. It (Constitution – Author’s remark) is intended to consolidate the priority of universal values over the class, to show the acceptability for Ukraine of generally recognized norms of international law”¹¹.

That is why the provisions were stipulated in Article 2 of the draft Constitution of Ukraine in 1992: “The constitutional system of Ukraine is based on the principle of the priority of human and civil rights and freedoms. The state is responsible to a person and society for their activities”¹².

In these provisions of the constitutional bill, the ideas drawn from the international human rights covenants are not the only key points that have been reflected. But also the ideas defended by the Ukrainian dissidents of the sixties, at the cost of loss of freedom¹³, for many years and decades, and in some cases – even the loss of life¹⁴. But those, who were free, were also subjected to the persecution of the totalitarian law-enforcement system, which deprived them of their right to professional activity, the right to privacy, the right to freedom of movement, the right to protection against illicit confinement in psychiatric hospitals, etc¹⁵.

Pro-Russian liberals in Ukraine often try to blame the Ukrainian dissidents of the sixties that they were not too fond of liberal-democratic rhetoric, but subordinated it to the tasks of Ukrainian state-building. We would like to say in response that our dissidents have done more for liberal ideas of dignity and human rights in Ukraine than Ukrainian and Russian liberals taken together.

As a matter of fact, the provisions on human dignity and human rights enshrined in the current Constitution of Ukraine are nothing more than the result of the titanic struggle of the Ukrainian dissidents of the sixties, who generously propagated these provisions with their sweat, health and losses. This should not only be recognized theoretically, but also taken into account in practical preparation of new generations of laws on human dignity and human rights.

Of course, the dissenters of the sixties are not to blame for the fact that independent Ukraine is not too concerned with the protection of the dignity and rights of its citizens, and trails far behind in the ratings of the world countries on

¹¹ Problems of contemporary Ukrainian Constitutionalism: Collection of Scientific Papers. In honor of the first Chairman of the Constitutional Court of Ukraine, prof. Leonid Yuzkov, p. 12 (in Ukr. language).

¹² See: V.O. Korolyuk, *Proponent of a new and righteous law (strokes to Leonid Yuzkov's portrait on the background of the historical era)*, V.O. Korolyuk; general edition and front word, V.M. Kampos, K., Yurinkom-Inter, 2014, p. 144 (in Ukr. language).

¹³ For a long time, criminal sentences were imposed by Soviet courts for the following dissidents of the sixties: Y. Badzo, B. Gorin, M. Goryn, L. Lukyanenko, M. Marynovych, V. Ovsyenko, M. Rudenko, S. Khmara, V. Chornovil and others.

¹⁴ In the Soviet camps, died the following dissidents of the sixties: Yu. Lytyyn, V. Marchenko, V. Stus and O. Tykhyi.

¹⁵ These are the dissidents of the sixties I. Dziuba, P. Grygorenko, S. Kyrychenko, S. Paradzhnov and others.

this issue. This is facilitated, for example, by the fact that science, in particular, legal science, writing a lot about human rights (as a rule, overlooking its interests, the issue of human dignity), does not even turn to the work of the Apostles of Truth and Freedom, i.e. our dissidents of the sixties! Then how exactly in these works a deep understanding of dignity and human rights, adapted to Ukrainian conditions, is given!

Obviously, in most cases, Ukrainian legal science, raised in the Soviet ideological principles, does not turn to the works of the dissidents of the sixties. And it is not so simple as it could be. These works for it would mean a departure from the Soviet tradition, which is preserved, because of the non-reformation of this science. Therefore, it is not surprising that in various institutes, departments and laboratories on human rights, works that are spiritually alien to humanistic ideas of the sixties come out.

By the way, even in Soviet times, the dissidents of the sixties themselves were not interested in proclaiming the provisions on human dignity and human rights in the Constitution and international covenants as their practical implementation. That is why, in 1976, the Ukrainian Helsinki Group (later – the Union) was formed consisting of: M. Rudenko, O. Berdnyk, O. Meshko, L. Lukyanenko, I. Kandyba, O. Tykhyi, N. Strokatova-Karavanska, M. Matusevych, M. Martynovich, P. Grigorenko. This group tried to act on the basis of the Helsinki agreements signed by the Soviet leadership (1975)¹⁶.

The first document of the Ukrainian Helsinki Group was the “Declaration of the Ukrainian Public Group for the Implementation of the Helsinki Agreements”, which had a multi-purpose function. Under the Soviet anti-democratic and anti-constitutional laws, members of the group were repressed; in the last years of the Soviet reorganization (1984-1991) they were released and rehabilitated.

In the independent Ukraine, the activities of the Ukrainian Helsinki Union, which unlike the group expanded the territorial boundaries of its activities, was continued. As public practice points out, violations of human rights, including unwritten Soviet standards, take place today as well. This activity is all the more relevant today in connection with the annexation of the Ukrainian Crimea by Russia¹⁷ and its unleashed war on the Ukrainian Donbass, which has led to gross violations of human dignity and human rights¹⁸.

¹⁶ See: Conference on Security and Cooperation in Europe. Final Act, <http://www.osce.org/ru/mc/39505?download=true> (in Russ. language).

¹⁷ See: N. Vlaschenko, *A theft, or the White Sun of the Crimea*, transl. from Russ. by V. Boyko, Foreword by V. Horbulina, Kharkiv: Folio, 2017, 394 p. (in Ukr. language).

¹⁸ For more information on the protection of human rights in the occupied Donbas, for example, see: V.V. Andriyuk, V.V. Knysh, V.I. Rozvadovsky, N.T. Gergelyuk, R.T. Chernega, I.P. Ptash-

Actually, in the same vein as the dissidents of the sixties, prof. L. Yuzkov considered dignity and human rights as human natural values. While preparing the draft Constitution of Ukraine in – 1992, he proposed to proceed from the following defining principles:

- human rights are not granted by the state; they are natural, and therefore – inalienable and intact;
- a list of human and citizen rights and freedoms, their content and mechanism of implementation must comply with international standards;
- all rights and freedoms of a person and a citizen, proclaimed by the Constitution, are subject to judicial protection;
- state bodies and officials are obliged to respect the rights and freedoms of a man and a citizen; the state is responsible for their provision¹⁹.

As it is known, according to the dogma of natural law, the basis of all human rights is its dignity. For prof. L. Yuzkov, this dogma was an axiom and it was reflected in the draft Constitution of Ukraine in 1992, in particular, in its Article 10: all people are born free and equal in their dignity and rights.

Prof. L. Yuzkov perfectly understood that in the early 1990's the old Soviet system did not disappear, and therefore, serious guarantees of the realization and protection of dignity and human rights are needed. In the draft Constitution of Ukraine in 1992, the whole Chapter 5 (Articles 50-59) was devoted to the guarantees of the rights and freedoms of citizens.

These guarantees should also include the right of citizens for a constitutional complaint to the Constitutional Court of Ukraine (hereinafter – the CCU), which was covered by part three of Article 243 of the draft Constitution of Ukraine in 1992. As you know, this right was enshrined in the current Constitution of Ukraine only in the process of the constitutional reform of the judicial power in 2017, that is, 25 years after the formation of the idea itself!

The feature of the doctrine of human rights by prof. L. Yuzkov was that it included dozens of new rights, in comparison with the Soviet constitutions, which were enshrined in the draft Constitution of Ukraine in 1992. For example, according to Article 30 of this draft: “Every citizen had the right, in the manner prescribed by law, to get acquainted with the information about oneself, as well as with official documents kept in state authorities and institutions, local self-government bodies. This right could be limited by law for the purpose of state and commercial secrets”.

nyk, *Protecting the constitutional rights and freedoms of a man and a citizen in the occupied territories of Ukraine: problems of constitutional and legal regulation*, K., 2015, 176 p. (in Ukr. language).

¹⁹ See: *Problems of contemporary Ukrainian Constitutionalism: Collection of Scientific Papers. In honor of the first Chairman of the Constitutional Court of Ukraine*, prof. Leonid Yuzkov, p. 12 (in Ukr. language).

Currently, these issues are only partially regulated by part three of Article 32 of the current Constitution of Ukraine: “Every citizen has the right to get acquainted with state authorities, local self-government bodies, institutions and organizations with information about oneself, which are not state or other secrets protected by law”. As you can see, the difference between the two texts is quite large and not in favor of the current Constitution.

And such restrictions on the constitutional rights and freedoms of citizens in comparison with the draft Constitution of Ukraine in 1992 are not isolated. The Verkhovna Rada of Ukraine (hereinafter – the Verkhovna Rada, and, in fact, the Ukrainian political class through it) has done a lot to establish the rights and freedoms of a man and a citizen in the Constitution of Ukraine of the year 1996. However, at the same time, the parliament, in the interests of this class, had to restrict certain rights that would give citizens too much opportunities to control a state power, as in the above-mentioned case.

It may sound a little paradoxical, but the current Constitution of Ukraine is not in any way comparable to the draft Constitution of Ukraine of the year 1992 in one very important issue for guaranteeing the rights and freedoms of citizens. It is a question of the institute of world judges, which has not yet become “native” for the current judicial system in Ukraine, which was reformed in 2017 without these judges.

In accordance with Article 205 of the draft Constitution of Ukraine of the year 1992, “justice on civil, administrative and criminal cases is carried out by courts: by world judges...”. In another norm, i.e. in part two of Article 209 of this draft, the world judges, as an element of the judicial system, are appointed by the Council of Ambassadors (the upper chamber of parliament) according to the results of the contest. The judges, who have been selected for the first time, are appointed for a term of five years.

The unwillingness of the modern parliament to introduce the institute of world judges is dictated not only by the corporate interests of state courts, which can lose up to 50–60% of cases that are now being brought to their consideration. In fact, this means that the judiciary body of existing courts of serving judges should be reduced almost by one-half with all positive and negative consequences that may follow. It is obvious that at the next stage of the judicial reform, the institute of world judges will still have to be introduced and it will become a very interesting and necessary stage for the democratization of the judicial system.

Obviously, the doctrine of dignity and human rights by prof. L. Yuzkov “worked” well at the level of constitutional regulation, since its provisions were mainly embodied in the Constitution of Ukraine of the year 1996. Although, some provisions of this doctrine are still not implemented by the legislator, but this should not dis-

turb us. It is not a matter of completeness of the reflection in the Constitution of certain doctrinal provisions, but how they are embodied in the social and legal life.

Unfortunately, more than 20 years of practice of the embodiment of doctrinal ideas of prof. L. Yuzkov, in particular, concerning the guarantees of the implementation and protection of dignity and human rights enshrined in the Constitution of Ukraine of the year 1996, proved to be quite imperfect. There are many specific reasons for this phenomenon, but they will all be very relative.

The main among these reasons is the fact that the constitutional mechanism of state power does not work in full, that is, state bodies and their officials often do not fulfill and do not adhere to the Constitution of Ukraine. In fact, they operate in an unconstitutional way by concluding unconstitutional agreements (so-called contractual arrangements), the usage of unconstitutional customs, traditions, principles, precedents, etc., which actually constitute a shadow Constitution. The latter, of course, supersedes the current Constitution of Ukraine on legal regulation, etc.

The material sources of the shadow constitution are the shadow economy and shadow policy, and, therefore, we must change not the current Constitution of Ukraine, as it has been offered very often, but economic and state politics. After all, despite all the formal imperfection of the US Constitution of the year 1787, Americans are in no hurry to replace it with a new, better Constitution, but continue to only improve the mechanisms for its implementation. Why would we, Ukrainians, not follow this path and not improve such imperfect mechanisms of the implementation of the current Constitution of Ukraine?

The shadowing of the Constitution of Ukraine is also promoted by such a factor of social existence as the mass constitutional nihilism of the bureaucracy imposed by oligarchic political parties, media and even Internet. Therefore, for the bureaucracy, the current Constitution of Ukraine almost does not exist, except the national holiday on June 28th – the Day of Constitution.

Instead of building a constitutional state, in which the Constitution of Ukraine should be the first principle of public and state life, the bureaucracy today is habituated to build the other one, i.e. an unconstitutional state, in which the current Basic Law has only a symbolic significance. Figuratively speaking, the bureaucracy, as already noted, instead of a house (state) with a foundation, is building a regular dugout, for which the foundation is not needed, but they call it very eloquently – Ukrainian state creation!

Meanwhile, it would be superfluous for Ukraine to adopt the two laws already mentioned, i.e. “On the Constitutional Enlightenment” – for the systematic increase of the constitutional knowledge and culture of officials and citizens in general; and “On Responsibility for Constitutional Violations”, which would allow the State Constitutional Inspection to take the subjects of power authorities, for

example, to constitutional and administrative responsibility for their constitutional offenses. Perhaps then, constitutional nihilism will retreat at least a little and give society and the state some new opportunities for more complete guarantees of the implementation and protection of dignity and human rights.

A new hope for Ukrainian citizens, i.e. the Agreement of the year 2014, which forseees the implementation of such values as dignity and human rights in all spheres of social and legal life in the country. However, this Agreement is not executed or is executed in part (somewhere within 15%). And there is something to think about for both – state authorities and civil society.

Thus, the doctrine of dignity and human rights by prof. L. Yuzkov has already played and continues to play an important role in the creation of theoretical foundations and practical mechanisms for their implementation and protection. That is why it still serves as a source for inspiration and formation of new constitutional ideas on issues that concern Ukrainian constitutional science.

3. The doctrine of the rule of law

Many Ukrainians think that the principle of the rule of law in the constitutional system appeared only after the adoption of the second democratic Constitution of Ukraine in 1996 (the first democratic Basic Law was the Constitution of the Ukrainian People's Republic of 1918). In fact, this universal legal principle was "sanctified" by the constitutional doctrine of prof. L. Yuzkov and the draft Constitution of Ukraine in 1992.

Prof. L. Yuzkov knew much more on the principle of the rule of law than he left in his scientific heritage. In 1993-1995, he was a member of the Venice Commission, where, together with his colleague, i.e. People's Deputy of Ukraine S. Holovaty, represented Ukraine. By the way, filling in the scientific gap in the issues of the rule of law, which was the result of the legal positivism doctrine domination in the legal science, Mr. S. Holovaty, in due course, prepared a three-volume study on this topic²⁰.

The doctrine of the rule of law by prof. L. Yuzkov was reflected in Article 5 of the draft Constitution of Ukraine of the year 1992, which stated: "The rule of law in Ukraine is in place. The Constitution has the highest legal force. The norms of the Constitution are rules of direct action. Laws and other legal acts should not contradict the Constitution of Ukraine".

Formally, courts, as the main means of implementing the principle of supremacy, were not directly obliged to govern it. But according to the draft Constitution

²⁰ For example, see: S. Holovaty, *The Rule of Law*. In three books. Second book. Rule of Law: From Doctrine to Principle, K., Publishing House "Phoenix", 2006, 1276 p. (in Ukr. language).

of Ukraine of the year 1992, they were not entitled to apply unconstitutional laws (part one of Article 217). In other words, each court should ensure the rule of law of the Constitution of Ukraine, and consequently, the rule of law through it, that is, indirectly.

Consequently, in the draft Constitution of Ukraine of the year 1992 there was no formal contradiction between the principles of the rule of law and legitimacy. Because, according to prof. L. Yuzkov, the Constitution itself should serve as the foundation of law²¹, and therefore all the contradictions between legitimacy and the rule of law should have been resolved within the constitution and in favor of constitutionality.

While this contradiction actually existed in the Constitution of the year 1996, which proclaimed the principle of the rule of law (Article 8), but the courts of general jurisdiction, according to the Article 129, had the right to solve cases on the basis of the law. However, on the one hand, there must be no contradictions between the rule of law and legitimacy, since legitimacy is an integral part of the rule of law in its Anglo-American interpretation.

However, on the other hand, normative-positivist doctrine and practice came from the opposite: for them, the rule of law was, in fact, only a component of law (Article 8 of the Code of Administrative Justice of Ukraine). Since this doctrine and practice dominated in the judicial system, the courts of general jurisdiction were actually guided by the law, regardless of whether it was constitutional or unconstitutional.

The main role in establishing the rule of law in modern Ukraine belonged and still belongs to the CCU, which, despite all the influence of the normative-positivist doctrine, has long been a subject to a broad interpretation of the rule of law principle. This was reflected in a number of its decisions, first of all, in the decision dd. November 4th, 2004 (the case on the imposition of a milder punishment).

According to the mentioned Decision:

The rule of law is the law supremacy in society. The rule of law requires the state to implement it in law-making and law-enforcement activities, in particular in laws that, in their content should be permeated primarily by the ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that the law is not limited only by legislation as one of its forms, but includes other social regulators, in particular, norms of morality, traditions, customs, etc., which were legitimized by society and conditioned historically by the cultural level of society. All these elements of the law are united by quality that corresponds to the ideology of justice, the idea of law, which has largely been reflected in the Constitution of Ukraine²².

²¹ See: Problems of contemporary Ukrainian Constitutionalism: Collection of Scientific Papers. In honor of the first Chairman of the Constitutional Court of Ukraine, prof. Leonid Yuzkov, p. 9 (in Ukr. language).

²² See: The decision of the Constitutional Court of Ukraine in the case of the constitutional petition of the Supreme Court of Ukraine regarding the compliance of the Constitution of Ukraine

On the basis of various interpretations of the relationship between the principles of the rule of law and legitimacy in the judiciary, disputes and discussions arose, the end of which was entrenched in the constitutional reform of the judiciary in 2017. According to the new edition of Article 129 of the current Constitution of Ukraine, courts of general jurisdiction must be guided exclusively by the principle of the rule of law.

As one may know, the Plenum of the Supreme Court of Ukraine in its time adopted the Resolution “On the application of the Constitution of Ukraine in the administration of justice”²³. However, the principle of the rule of law in it was reduced to a slogan that the judicial activity should be aimed at protecting these rights and freedoms from any encroachments by ensuring timely and qualitative consideration of specific cases. It should be taken in mind, the Resolution states that, in accordance with Article 22 of the Constitution, the rights and freedoms of a man and a citizen enshrined in it, are not limiting.

Of course, to a larger extent, this Regulation has lost its practical value and needs to be updated. Especially in a view of the fact that courts should be guided by the rule of law (equity, proportionality, legal certainty, equality, etc.).

One of the key elements of the rule of law in Ukraine is the principle of the supremacy of the Constitution of Ukraine. Prof. L. Yuzkov believed that “not only the state (legal) acts, but also any other social acts, such as political, corporate, acts of self-government, etc. should not stand (must not stand) over the Constitution. All of them must correspond to the letter and spirit of the Constitution, they must be constitutional”²⁴.

The supremacy of the Constitution of Ukraine is a value that can hardly be overestimated in the life of Ukrainian society and state. However, this value has not yet become deeply understood by the Ukrainian political class, which is lenient to its violations by high-ranking officials.

This practice only deepens constitutional nihilism among citizens, which has long been the main obstacle to the implementation of the principle of the supremacy of the Constitution of Ukraine. In addition to broad educational measures, Ukraine also needs state decisions that would, as already mentioned, include the constitutional and administrative responsibility of high-ranking officials.

(constitutionality) with the provisions of Article 69 of the Criminal Code of Ukraine (case on the establishment of a court of a more lenient punishment) of November 2nd, 2004, <http://zakon5.rada.gov.ua/laws/show/v015p710-04> (in Ukr. language)

²³ See: On the Application of the Constitution of Ukraine in the administration of justice - Resolution of the Plenum of the Supreme Court of Ukraine, No. 9 dated November 1st, 1996, <http://zakon5.rada.gov.ua/laws/show/v0009700-96> (in Ukr. language).

²⁴ See: Problems of contemporary Ukrainian Constitutionalism: Collection of Scientific Papers. In honor of the first Chairman of the Constitutional Court of Ukraine, prof. Leonid Yuzkov, p. 9 (in Ukr. language).

An interesting element of the doctrine of the supremacy of the Constitution of Ukraine by prof. L. Yuzkov is the idea of constitutional laws. In his opinion, these laws should regulate the same social relations as the Constitution, but not cover all the constitutional “matters”, but only the most important ones, which are defined by the Constitution. Such laws would have to stabilize the current Constitution of Ukraine; some of them (organic ones) could be specific addendums to the Constitution (instead of making changes to it). The others among them are the nominal ones, stipulated by the Constitution of Ukraine, should be its continuation, specification²⁵. However, taking into consideration the fact that an ambiguous attitude was expressed to the concept of constitutional laws in the Ukrainian legal community, prof. L. Yuzkov had proposed only its discussion²⁶.

It is obvious that in the presence of organic constitutional laws, the principle of supremacy of the Constitution of Ukraine should be extended to them. Such a complex construction of the Basic Law of the country would require the recruitment of highly qualified constitutionalists for all bodies of state power, and at that time there were only few of them. Perhaps, this has caused the situation that the idea of constitutional laws was not perceived by the legal community.

However, the doctrine of the supremacy of the Constitution of Ukraine by prof. L. Yuzkov contains just one fantastic idea that can change the views of society on some contemporary constitutional problems. Thus, he believed that the other side of this supremacy was that at the same time the Constitution itself should be constitutional. The constitutionality of the Constitution, in his opinion, is determined by the following factors:

- high, folk legitimacy, i.e. the reflection of its true will of the people;
- recognition and approval of universal values and, above all, subordination of the state, its authorities and all officials to the service of society, and not vice versa;
- taking into account international standards of democratic constitutionalism in the Constitution, which are universally recognized and verified by the practice²⁷.

As a matter of fact, prof. L. Yuzkov formulated the problem of the constitutionality of the Constitution, which today can not be solved by the constitutional science, because the policy has intervened in the case. Yes, this problem is connected, in particular, with the decision of the Constitutional Court of Ukraine dated September 30th, 2010, which abolished the Law No. 2222 on amendments to the Constitution of Ukraine in terms of the form of government (change of presidential-parliamentary to parliamentary-presidential). The reason for that is that the Parliament’s violation of the procedure for amending the Constitution of Ukraine.

²⁵ See: The same, p. 10.

²⁶ See: The same, p. 9-10.

²⁷ See: The same, p. 9.

However, not all authors agree with the thesis of prof. L. Yuzkov that the Constitution of Ukraine should be constitutional and, therefore, they criticize this decision of the Constitutional Court for its intervention in the sphere of exclusive competence of the Parliament. But, there are no grounds for this, because the Court always intervenes in the exclusive sphere of activity of the Verkhovna Rada, when it abrogates its laws or its provisions.

In fact, the CCU proceeds from the presumption that unconstitutional provisions of the Constitution of Ukraine, if they are introduced into it by laws, as a rule do not have the proper legitimacy, efficiency or connection with the practice of democratic constitutionalism. A concrete example of such problems is the restoration of the Constitution of Ukraine in the edition of the year 2014, the unconstitutionality of which has been the subject of scientific criticism²⁸.

The Venice Commission, which included prof. L. Yuzkov, contributed to the establishment of the rule of law in Ukraine. This commission today also proceeds from the principle that the rule of law is intended to serve not only the safeguarding of human dignity and human rights, but also constitutional democracy. However, in Ukraine it is almost impossible to come to democracy through the rule of law, as the state authorities have not yet agreed to its widespread affirmation.

As an example, it is worth mentioning the situation of introduction of the Higher Anti-Corruption Court, which draft law was submitted to Parliament by the President of Ukraine, under the pressure of Western countries²⁹. The Ukrainian political class is afraid of its introduction and does everything to delay the adoption of this bill.

However, nothing can stop the historical process of transforming the legal and political system of Ukraine on the principles of the rule of law. Against this backdrop, the doctrine of the rule of law by prof. L. Yuzkov is a reliable benchmark for discussions and practices.

Final provisions. Probably, the value of the doctrine of European common democratic values by prof. L. Yuzkov has never been recognized in Ukraine so significantly as after the Revolution of Dignity and signing of the Agreement in the year 2014, when the new, most important era of practical realization in constitutional and other legal practice began to be realized in the life of the country.

It is known that history teaches that it does not teach anything. The history of the doctrine of European common democratic values by prof. L. Yuzkov points out that until legal science is not seriously studying this issue, there will be no success.

²⁸ For example, see: G.V. Berchenko, *Restoring the text of the Constitution in the aspect of the concept of the constituent power*, Forum of Law, 2016, No. 4, p. 31-34 (in Ukr. language).

²⁹ See: About the Supreme Anticorruption Court. Draft Law of Ukraine, https://24tv.ua/zyavivsyia_tekst_zakonoproektu_pro_vishhiy_antikoruptsiyniy_sud_shho_propouyue_poroshenko_n906546 (in Ukr. language).

So far, this science and doctrine live as if in different worlds and cross over from one prof. L. Yuzkov's anniversary to another one, but each of them lives independently and, therefore, they can not serve one another.

Prof. L. Yuzkov was a supporter of victories over the opponents of European common democratic values through the progressive democratic development of society and the state. He believed that democratic Ukraine could not use violence against hidden or outright opponents of these values, except for cases of crimes committed by them. It may happen on the path to advanced development that Ukraine will be able to resolve its internal and external problems, including problems associated with the Russian war in the Ukrainian Donbass and the occupation of the Ukrainian Crimea.

An era generates a person, and a person is a future of his people. Prof. L. Yuzkov, having known his era, tried to look into the constitutional future of Ukraine and give it his vision through the prism of the draft of his Constitution of the year 1992. His vision of the future is also fascinating today, because it has everything: both the high intelligence of the scientist and the dignity of the Man, who overcame totalitarian socialism, and a sincere desire to serve Ukraine to the end.

Doktryna wspólnych europejskich wartości demokratycznych Profesora L. Yuzkova: ukraińska historia i współczesność

Streszczenie. Artykuł przedstawia doktrynę wspólnych europejskich wartości demokratycznych (godność, prawa człowieka, rządu prawa i demokracja konstytucyjna) opracowaną przez pierwszego prezesa Trybunału Konstytucyjnego na Ukrainie Prof. L. Yuzkova, jak również rolę tej doktryny w rozwoju pierwszego projektu konstytucji Ukrainy z 1992 r. oraz na kolejne konstytucje z 1996, 2004 oraz 2014 roku.

Słowa kluczowe: doktryna wspólnych europejskich wartości demokratycznych Profesora L. Yuzkova, projekt konstytucji Ukrainy z 1992 r., konstytucja Ukrainy z 1996, 2004 i 2014 r., godność i prawa człowieka, rządu prawa, demokracja konstytucyjna

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