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COULD NEW REFERENDUM LEGISLATION UNDERMINE CONSTITUTIONAL ORDER FOUNDATIONS?

Андрій Самотуга. ЧИ МОЖЕ НОВЕ ЗАКОНОДАВСТВО ПРО РЕФЕРЕНДУМ ПІДРВАТИ ОСНОВИ КОНСТИТУЦІЙНОГО ЛАДУ? Незважаючи на історично визнаний демократичний характер такої форми прямого народного волевиявлення, як референдум, його реалізація в сучасних умовах інколи вбачається вельми суперечливою, навіть загрозливою як демократичним традиціям, так і основам конституційного ладу самих демократичних держав.

Аналізована проблема донедавна здебільшого розглядалася в аспектах теорії, генезису, нормативно-правового та організаційного забезпечення реалізації цієї форми прямої демократії. Втім поза увагою дослідників залишаються питання співвідношення референдумів з проблемами правового захисту конституції, зокрема, та основ конституційного ладу, взагалі.

Поряд з існуючими перевагами поставлено за мету необхідність виявлення й теоретико-методологічне обґрунтування політико-правових ризиків формування нового референдного законодавства України та його можливий негативний вплив на непохитність основ конституційного ладу держави.

Проаналізовано ретроспективу окремих фактів проведення референдумів, внаслідок яких були зрушені, а в деяких випадках на певний час ліквідовані демократичні свободи та піддані ревізії міжнародні механізми їх захисту.

Звернуто увагу на дискусійні положення проекту закону України «Про народовладдя через всеукраїнський референдум» у частині внесення змін до Конституції України стосовно норм про засади конституційного ладу.

На підставі викладеного зроблено такі, зокрема, висновки: 1) через застосування референдуму як форми прямої демократії не завжди відбувається її зміцнення, а інколи навпаки – прямування держав до авторитаризму й навіть до тоталітаризму; 2) через зловживання референдумним правом відбувається підміна представницької, парламентської демократії, дискредитація інституту парламентаризму і, врешті-решт, інституту прямої демократії взагалі; 3) через зловживання інформаційним правом відбувається деструктивна діяльність ЗМІ у маніпуляції суспільною думкою виборців.

Ключові слова: референдум, демократія, зловживання, конституційний лад, законопроект, внесення змін.

Relevance of the study. One of the features of a democratic state, which defines Ukraine in Art. 3 of its Constitution, is the attribution of the people to a single source of power. According to the Constitution, this power is executed by the people, in particular, directly - through elections and referendums. The issue of legal regulation of such a form of direct democracy as a referendum has already become quite complex and sometimes contradictory in all the years of independent Ukraine, despite the fact that the Basic Law quite clearly regulates this democratic institution (Chapter III), and its organization and order to be determined exclusively by the laws of Ukraine (paragraph 20 of Article 92) [1].

Recently, in the context of a substituting in Ukraine's political class through such a form of direct democracy as elections, issues of another form - referendums - have also accompanied recent election campaigns. Therefore, despite the historically recognized democratic nature of such a popular will, its implementation in today conditions is seen by many experts as very contradictory, and even more threatening to both democratic traditions and the foundations of the constitutional order of the democratic nations themselves.

Recent publications review. The issue of referendums as a form of direct democracy has been the subject of research by many foreign and domestic legal scholars, mainly in the

field of constitutional law and the theory of state and law, in particular: Yu. Klyuchkovskyy, I. Koliushko, V. Maklakov, R. Marandyan, M. Onishchuk, O. Plakhotnik, V. Pohorilko, B. Puchalska, T. Ryabchenko, V. Fedorenko, V. Shapoval, A. Yanchuk. This issue is actively discussed by experts in the field of political science: S. Derevyanko, D. Kenny, A. Quinn, I. Khavruk and others.

The raised problem was mostly considered in the aspects of theory, genesis, regulatory and organizational support of realization of this form of direct democracy. However, researchers do not pay attention to the ratio of referendums with the problems of legal protection of the constitution, in particular, and the constitutional order foundations in general.

The article's objective is, along with the existing advantages, the need to identify and theoretically and methodologically substantiate the political and legal risks of forming new referendum legislation of Ukraine and its possible negative impact on the steadfastness of the constitutional order of the state. The implementation of this goal determines the making of proposals to minimize or even avoid such dangers and risks.

Discussion. Recently, after a pause of more than 20 years, when the only all-Ukrainian referendum was held so far since independence in March 2000 (the results of which were not enshrined in law), not including the referendum of December 1, 1991 to confirm the Act of Independence, in the domestic society and politicum the topic concerning this, unfortunately, contradictory form of direct popular will is beginning to gain momentum. Thus, the fifth President of Ukraine during his speech on December 1, but in 2017 at the celebrations on the occasion of the Day of Prosecutors stated that the Ukrainian people will support the issue of Ukraine's accession to NATO and membership in the European Union in a referendum. However, fortunately, such measures were limited to the legislator's wisdom and foresight, when the Law of Ukraine of 07.02.2019 amended the Constitution of Ukraine concerning the strategic course of the state to become a full member of Ukraine in the European Union and the North Atlantic Treaty Organization [1].

Today, however, a wave of referendums has swept Europe itself, according to The Economist, noting that it is not a very useful process. In the 1970s, an average of three referendums were held on the continent each year. Now there are an average of eight. And this is regardless Switzerland and Liechtenstein, which have a long tradition of direct democracy. From one hand, fans of direct democracy argue that referendums offer a way to engage voters; support for mainstream parties has tanked in the rich world; referendums on issues can get people interested in politics. But, on the other hand, increasingly, referendums are being used as a more troublesome political tool. Some, including the one in Hungary, have been called to challenge or subvert EU policies. For example, in 2015 Alexis Tsipras, Greece's prime minister, called a referendum with only eight days' notice on the Greek bail-out conditions. Elsewhere, populist single-issue groups are using referendums as a way of challenging EU-wide treaties [2].

Thus, in this publication there is even an additional goal – to find out the possibility of the influence of this citizens' political right on the principles of both the territorial integrity of an individual country and the unity of voluntary democratic state associations, which is now the European Union.

For example, it is appropriate to refer to the tragic events in interwar Europe of the last century, namely the referendums held in Nazi Germany: 1933 - Extraordinary parliamentary elections simultaneously with the referendum on Germany's exit from the League of Nations (95.1% of the vote "pro"); 1936 - referendum on the occupation of the demilitarized Rhineland (98.8% "pro"); 1938 - Referendum in Austria on the Anschluss with Germany (99.73% "pro"). However, voter turnout is not provided here. Hence the analogies with the current referendums after the annexation of Crimea and the occupation of Donetsk and Luhansk oblasts - low turnout and "high" percentages of support for separatist referendum organizers in violation of Ukrainian law, which states that referendums to alter Ukraine's territory are exclusively national ones [1]. Since then, in post-war West Germany, the occupying power of the allies of the anti-Hitler coalition has banned any referendums for several years. And today the Constitution of Germany of 1949 contains a rule on a national referendum only on the division of federal lands [3].

In 1945 British Prime-Minister Clement Attlee denounced the referendum as "alien to all our traditions" and an "instrument of Nazism". Harold Wilson, the Prime-Minister (1964—1970 and 1974—1976), who would hold Britain's first national referendum in 1975, had previously dismissed the idea as "contrary to our traditions" and "not a way in which we can do business", scoffing that a referendum would probably abolish the income tax. His Conservative opponent, Margaret Thatcher, called the referendum "a device of dictators and demagogues"

that would be dangerous to minorities and destructive of parliamentary sovereignty [4].

It is also worth mentioning the only referendum in the history of the USSR, held in 1991 - the last year of this superpower existence. The wording of the main question of the bulletin caused a great deal of controversy from the outset, and it seemed confusing whether it was about preserving the USSR or about a new federation of "equal sovereign republics."

It was the Soviet Union collapse that was a direct consequence of the Ukrainian referendum of December 1, 1991, in which more than 90% of those who took part in it voted for independence. This vote annulled the results of a previous referendum held in March 1991, in which more than 70% voted in favor of further participation in the Union on the basis of far-reaching reforms. The life or death of the USSR depended on its citizens vote [5, p. 428-429].

The beginning of the new millennium has been marked by events such as the referendums on the European Union Constitution under the laws of some member states on the mandatory conduct of ratification referendums.

A French referendum was held on 29 May 2005 to determine whether France should ratify the proposed EU Constitution. As a result, the Constitution was rejected by a majority of votes (55%) with a turnout of 69%.

A similar referendum was the first in more than 200 years in the history of the Netherlands (the previous one was held in 1801) and in no way bound the government, that is, even though the proposal for a Constitution was rejected by a majority of voters, it could be ratified by the General States of the country. However, even before the vote, the government stated that it would act under the voters' decision with more than 30% turnout. The results of the voting showed that 61.6% of voters rejected the Constitution with 63.3% turnout. Since then, a draft such as the EU Constitution has been postponed indefinitely by EU officials.

In the current decade, for example, the first referendum on Scottish independence took place on September 18, 2014. According to the final results, 44.7% of voters supported the independence.

And on June 26, 2016, in a referendum, the British voted (51.89% "pro") to leave the European Union (Brexit). Most Scots, on the other hand, prefer to leave the United Kingdom by staying in the EU. Therefore, according to the agreements with the official bodies of the European Union, the procedure for Britain's withdrawal from the EU was calculated by 2019.

Moreover, as experts say the UK proved to be particularly vulnerable to such a risk: blurring of delineation of constitutionality of a matter under consideration and, more crucially, the weak regulation of referendums under the UK's uncodified constitution, arguably led to partisan capture and can be linked to widespread manipulation of the electorate by campaign of misinformation [6, p.82-83].

The role of the media in this was also controversial. So, it is highly likely that the media have decisively influenced the public perception of EU-related matters. Hence, it can be suggested that British media have been successful in infecting the British public with Euroscepticism of an aggressive variety. A contributing factor was the UK politicians' tacit acquiescence to the hostility in the UK media's style of reporting on Europe. Another was the unavailability of any competing coverage of European matters on European level. The British people were never informed about what the EU is and what it does. Instead, they were fed a diet of sustained one-sided Euro-bashing [6].

September 2017 - Spain, where its richest region of Catalonia declares its independence in a referendum. And before it was held, the Spanish Minister of Economy promised to give greater economic independence to Catalonia in exchange for refusing a referendum. Today, this separatist conflict has been resolved after the flight of Catalan leader Carles Puigdemont to Belgium, who later surrendered to Spanish justice.

The example of the Catalans was picked up by the northern regions of Italy, Lombardy (center – Milan) and Veneto (Venice), which in a referendum in October 2017 called for greater economic independence.

Thus, we have clear examples of referendums on separation from states or joining / non-joining unions of states. In this regard, the British journalist and publicist E. Lucas writes that issues related to national self-determination are quite complex, so it is not always advisable to hold referendums on them. After all, plebiscites lead to divisions, while consensus is needed. A referendum can answer one question but raise others at the same time. In addition, it is not necessary to choose between full independence and the status quo: many linguistic, cultural and religious conflicts are resolved through autonomy under a liberal and democratic political system. Finally, the author emphasizes that foreign intervention in such cases is useless. If the

local separatist movement has overt or covert support for an external force (in particular, financial-corruption, information-propaganda), it becomes a threat to national security rather than an authentic manifestation of regional identity [7].

Another type of ratification referendum is the accession of new member states.

Thus, the referendum on the approval of the Association Agreement between the European Union and Ukraine or the Consultative referendum of the Netherlands on the association of Ukraine and the EU took place in the Netherlands on April 6, 2016. The referendum was advisory and corrective in nature, and was announced by the Dutch Election Commission after 420,000 signatures for such a referendum were declared valid. On April 6, 2016, 61% of voters who took part in the referendum voted against the agreement. After an allegedly euroskeptical vote in 2016 that rejected an E.U. treaty with Ukraine, the government abolished the referendum process, supposedly on the basis that referendums give rise to populism [8].

From the above we can conclude that all these referendums were not only a positive experience of involving civil society in political life. They also found widespread alienation from politics and dissatisfaction with the ruling class. Support for the old political parties is declining, while populists and Eurosceptics are gaining momentum. Moreover, experts believe that governments, which voters consider an elite detached from reality, find it very difficult to resist calls to put controversial issues to a referendum.

The EU is often the target of such referendums. And it's not just, for example, in the UK. According to opinion polls, more than half of Italians and French also want a referendum on their countries' EU membership. Some referendums are held by the current government to reduce pressure from populist opponents. That's how it all started in the UK. And populists who want to sever ties with the EU or fight against European decisions that they do not like are seeking to hold others. For example, the Hungarian government is thus opposing the European Commission's decision to admit refugees. Eurosceptics also managed to hold a referendum on an agreement between the EU and Ukraine.

This "referendum fever" has made a number of problems. After all, it has complicated the process of adopting international agreements. Treaties are usually signed by governments or presidents and ratified by parliaments. And if we add a national referendum to this process, decision-making will be very difficult. Thus, it is almost impossible to predict how the 28 countries will adopt the EU agreements. That is, a minority in small countries can create serious problems for the entire European Union. For example, only 32% of Dutch people took part in a referendum on an agreement with Ukraine. But their decision could undermine the entire European project.

Opponents of referendums also argue that if the executive branch has the power to decide in which cases referendums should be held, it can use them as a political tool in the interests of the ruling party rather than in the interests of democracy. They also argue that due to lower voter turnout in referendums than in national elections, the argument that referendums increase the legitimacy of political decisions is not justified.

Despite the fact that in the modern world there are supposedly effective mechanisms for the exercise of democracy through the adoption of relevant acts and the establishment and operation of international human rights institutions (UN, Council of Europe, etc.), the world community, however, does not yet have reliable guarantees (including legal ones) from the aggressive actions of its individual members, who use hybrid methods of their influence on countries that they consider "areas of their national interests." In particular, the National Security Strategy of the Russian Federation of 31.12.2015 states that the government pursues an open, rational and pragmatic foreign policy that eliminates costly confrontation (including a new arms race) [9]. That is, in addition to the classic military, it is about political, economic, humanitarian and informational destabilizing effects (including through interference into elections and referenda) primarily on post-Soviet countries. Russia's participation in almost all presidential elections in Ukraine (except for 2014) was particularly active due to the support through affiliated media of openly pro-Russian candidates, and discrediting of patriotic and pro-Western ones.

One of the means of legitimizing the justification by the Russian Federation of the annexation of the Autonomy Republic of Crimea (hereinafter – ARC) and the occupation of part of the territories of Donetsk and Luhansk regions was the use as a successor to the USSR of the means already tested in the past – organization and holding of referendums and elections with a predetermined result - confirmation by voters of their "aspirations" to integrate into their "historical homeland". At the same time, there is an abuse of even international law (which in the

modern legal lexicon is defined as "lawfare" – "law" and "warfare") [10].

The coup d'etat in the ARC, according to Ukrainian researchers, took place in the best traditions of Bolshevism: seizure of the Crimean TV and Radio Company with disconnection of Ukrainian TV channels, blocking of transport communications with mainland Ukraine, seizure of airfields, mass transition of Ukrainian officers - mostly residents of the ARC - to the side of the RF Armed Forces, adoption by the Sevastopol City Council and the ARC Parliament of a declaration of state sovereignty, which was to be confirmed in an all-Crimean referendum. On March 16, 2014, taking advantage of the confusion of the world community, the creators of the "Crimean Spring" changed not only the procedure but also the wording of the question, put to a "referendum", which was determined by two: "Are you in favor of the reunification of Crimea with Russia as a subject of the Russian Federation? Are you for the restoration of the Constitution of the Republic of Crimea of 1992* and for the status of Crimea as a part of Ukraine?" [11, p. 406]. As we can see, the questions are purely manipulative with a predetermined answer. Moreover, modern world standards of suffrage and referendum law provide for the submission to a referendum of only one question with alternative answers - "yes" or "no".

The problem, in our opinion, is that the issues of legal regulation of initiating and conducting such referendums are almost non-existent at the international level and are exclusively subject to national legislation, which is not perfect and stable in this area. Therefore, no matter how high the support of Ukrainians for the ideas of joining NATO and the EU, the decision will be made outside of Ukraine, moreover, under the conditions of implementation of a number of not very popular measures, such as pension, housing and communal services, health care, judicial and law enforcement, defense, anticorruption and many other reforms.

After the Constitutional Court of Ukraine declared the Law of Ukraine "On All-Ukrainian Referendum" of November 6, 2012 to be unconstitutional on April 26, 2018, a kind of legislative vacuum was made, which must to be filled with the already new law on referendum, the adoption of which is long overdue.

Thus, the subject of the all-Ukrainian referendum was the already invalid law recognized any issues except those whose resolution is not allowed by the referendum under the Constitution of Ukraine, and the laws of Ukraine, and that several questions on one issue can be put to an all-Ukrainian referendum [12]. In fact, the then authorities were given the freedom to "push" through the referendum any issues with a favorable result of the vote, but in practice it was not implemented, which was prevented with mass protests in late 2013 - early 2014, caused by other events, but also closely related to the government's disregard for the ideas of democracy - the refusal to sign the Association Agreement between Ukraine and the EU, despite the rather strong European integration aspirations and expectations in society.

Today, the draft law "On People's Power through an All-Ukrainian Referendum" has been under consideration by the Verkhovna Rada for more than six months. It was initiated by the President Volodymyr Zelenskyy, who has promised to establish people's power in Ukraine since the beginning of his term. According to opposition people's deputies, Ukraine needs such a law, but the procedure should be written so that it helps democracy, not destroys it. After all, we know how dictators like to use referendums. In the hands of leaders prone to authoritarianism, a referendum can be dangerous for democracy.

Interesting in this regard is the study of some Ukrainian scholars conducted in 2013. Their analysis dealt with constitutional referenda which contributed to the "presidentialization" (expansion of powers and increasing the influence of the president as head of state on all branches of government against the background of weakening the role of parliament and reducing government accountability) in post-soviet countries with the system of presidential and semi-presidential government. The most characteristic features of the "presidentialization" process based on the results of referendums are: extension of the term of office of the president (Russia, Uzbekistan, and Tajikistan); lifelong consolidation of presidential powers (Kazakhstan, Turkmenistan); opportunity for the incumbent president to run for the presidency for an unlimited number of times (Belarus); exclusion from the constitution of a provision prohibiting

* In 1995 the Verkhovna Rada of Ukraine has abolished the Constitution of the Autonomous Republic of Crimea due to the non-fulfillment by the Verkhovna Rada of the Autonomous Republic of Crimea of the resolutions of the Verkhovna Rada of Ukraine on bringing the Constitution and laws of the Autonomous Republic of Crimea into conformity with the Constitution and laws of Ukraine throughout its territory and protection of the state sovereignty of Ukraine.

one person from holding the presidency more than twice in a row (Azerbaijan); increasing the president's powers (Kyrgyzstan), including to establish additional reasons for dissolving parliament (Ukraine) [13, p. 74-75].

Other provisions of the analyzed bill concerning, in particular, amendments to the Constitution of Ukraine also provoke some discussion.

Currently, the text of the draft law "On People's Power through an All-Ukrainian Referendum" adopted in June 2020 states that the subject of an all-Ukrainian referendum may be the following issues:

- approval of the law on amendments to the sections of the Constitution: I (General Principles), III (Elections. Referendum), XIII (Amendments to the Constitution of Ukraine);
- of national importance;
- on changing the territory of Ukraine;
- to terminate law of Ukraine or its individual provisions.

The text of the bill also states that the following issues cannot be the subject of an all-Ukrainian referendum:

- contrary to the provisions of the Constitution of Ukraine, universally recognized principles and rules of international law, enshrined primarily in the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, protocols thereto;

- aimed at eliminating the independence of Ukraine, violating the state sovereignty and territorial integrity of Ukraine, making a threat to the national security of Ukraine, inciting interethnic, racial and religious hatred;

- on bills concerning taxes, budget, amnesty;

- referred by the Constitution of Ukraine and laws of Ukraine to the jurisdiction of law enforcement agencies, prosecutors or courts [14].

So, as follows from the above, if, for example, the subject of an all-Ukrainian referendum *can be* (italic hereinafter – A. S.) Amendments to the Constitution of Ukraine, namely to chapter 1 "General principles" (meaning the principles of the constitutional order), it then - it turns out that *may not be* the same most of the provisions of Section I: e.g., Art. 1. "Ukraine is a sovereign and independent, democratic, social, legal state"; Article 3. "A human, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value" and others basic values of the constitutionality of the Ukrainian state, such as the status of the state language, state symbols, political, economic and ideological diversity, separation of state powers, recognition of local self-government, republican form of government, integrity and inviolability of Ukraine's territory within its existing border. That is, holding referendums on these issues means questioning the very centuries-old idea of national statehood of Ukraine.

Thus, this bill, in order to fill, as already mentioned, the legislative gap regarding the referendum democracy in Ukraine, does not put an end to its final perfection. On the contrary, it raises a number of issues that are the subject of separate publications. It is known from history that the referendum as a form of direct democracy was abused by completely undemocratic politicians and statesmen, which led to the destruction of democratic institutions both within their states and to world-class tragedies. Just as the all-Ukrainian referendum was able to confirm the independence of the state (December 1, 1991), but will also be able to question its continued existence, including and through local referendums, for which bill work has also intensified.

If we connect the influence (mostly negative) of referenda on the constitutional order foundations, then, although the Constitution of Ukraine uses the concept of "constitutional order" (and only in the context of inadmissibility of its forcible alteration or overthrow, and the exclusive people's right to determine it alter), but the term itself is not defined by it. Moreover, according to experts, the main contradiction in the system of constitutional order is that the Constitution of Ukraine, on the one hand, enshrines a fairly high level of constitutional human rights, on the other - defined in it the system of public authority cannot ensure and guarantee the majority of these rights. The consequence of this may be not only a constitutional crisis, but also the complete alienation of citizens from the government or its individual institutions, which, on the one hand, threatens to destroy the foundations of the constitutional order and statehood, and, on the other hand, the ability to generate a backlash, "launching" the constitutional institution of "people's defense" of the constitutional order. The basis for its legal use is a real and large-scale threat to the stability of government and its institutions, human and civil

rights and freedoms, when other means are no longer available. The events of the Revolution of Dignity are therefore strong evidence [15, p. 38-39]. This, we believe, also applies to voting rights, the violation of which has triggered the previous – the Orange Revolution.

Therefore, it is no coincidence that today such a form of direct democracy as a referendum is almost rarely used in most democracies, except for local referendums. We believe that this will not be a violation of the principles of democracy, because the sustainable and progressive development of the state and society occurs through the development of other institutions and legal traditions.

In this regard, it is worth noting the views of some foreign authors who note that criticism of referendums in legal and political science literature is not new.

The first core criticism is that referendums are subject to elite control and manipulation, and essentially become tools to enable elite governance masked in the cloak of direct democracy.

Secondly, the majoritarian nature of referendums creates a concern that they facilitate abusive majority rule. This is highly suspect, it is said, in the context of minority rights, which need to be protected from such assaults.

Thirdly, referendums are said to be bad for democratic deliberation, as their binary, winner-take-all, and majoritarian nature gives little incentive to deliberate and compromise.

Fourthly, and relatedly, there is a concern that referendums and direct democracy can and will erode or supplant the processes and procedures of representative democracy, and may decrease satisfaction with electoral politics.

Fifthly, there is a fear that voters cannot grapple with the complexity of issues that they may vote on in referendums. Voters have an incentive to be rationally ignorant in respect of referendums, as the likelihood of any one vote determining the issue is exceptionally small.

Sixthly, in the aftermath of Brexit, concerns about voters being misled by disinformation and falsehoods have been widespread. At best, voters can be sold a broad and vague idea with no understanding of how they will be executed in practice.

Finally, there is particular fear of increasing use of referendums in countries with “no history of direct democracy”, where they are ad hoc tools for determine single constitutional issues. Such uses hold particular dangers [16].

Conclusions. Based on a study of the impact of referendums on the basis of the constitutional order of the state, we found out and proposed the following:

1) a referendum in the hands of populist rulers leads to the fact that through a referendum (using administrative resources and falsifications) states and societies go to authoritarianism and even to totalitarianism;

2) due to the abuse of the referendum, representative, parliamentary democracy is being substituted, and the institution of parliamentarism is being discredited due to a decrease in voters' interest in the parliamentary elections. If the work of the deputies is unsatisfactory, it is necessary to dissolve the parliament and hold early elections. Improving the quality of the parliamentary corps is possible through improving the institution of political parties;

3) as a result of abuse of the right to referendum, unprofessionalism, amateurism of voters, and hence, reduction of their positive constitutional and legal responsibility;

4) the danger of referendums in states with a short history and weak traditions of direct democracy is obvious: cases of absenteeism with another extreme - hyperbolized perception and absolutization of elections and referendums as a panacea and a means of overcoming the constitutional crisis;

5) there is an excessive interference of the media (belonging to the oligarchs) in manipulating of voters' opinions;

6) there is a high probability of socio-political and territorial separation of the state due to referendums on such sensitive issues as language, religion, foreign policy, etc., which should be the prerogative of the legislator alone, and the dispute should be resolved by the judiciary;

7) it is inadmissible for us to amend Chapter I the Constitution in any way, including through a referendum, but only by adopting a new constitution;

8) the legislation on the local referendum also needs careful elaboration, namely the definition of an exhaustive list of issues on which it is not allowed to be held, aimed at violating the sovereignty, national security and territorial integrity of Ukraine.

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Abstract

The article deals with some problems of realization and political-legal consequences of such form of direct democracy as referendum. Along with the existing advantages, the article's objective is to identify and theoretically and methodologically substantiate the political and legal risks of the formation of new referendum legislation of Ukraine and its possible negative impact on the steadfastness of the constitutional order of the state.

The author has analyzed a retrospective of some facts of referendums, as a result of which democratic freedoms were narrowed and in some cases liquidated and international mechanisms for their protection were revised.

The attention has been paid to the debatable provisions of the draft law of Ukraine "On People's Power through an All-Ukrainian Referendum" in terms of amending the Constitution of Ukraine regarding the rules on the constitutional order foundations.

Keywords: *referendum, democracy, abuse, constitutional order, draft law, amendments.*

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PROBLEMS OF IMPLEMENTING THE RIGHTS TO HOUSING AND HEALTH PROTECTION OF INTERNALLY DISPLACED PERSONS IN UKRAINE: THEORETICAL AND PRACTICAL ASPECTS

Наталія Ісаєва. ПРОБЛЕМИ РЕАЛІЗАЦІЇ ПРАВА НА ЖИТЛО ТА ПРАВА НА ОХОРОНУ ЗДОРОВ'Я ВНУТРІШНЬО ПЕРЕМІЩЕНИМИ ОСОБАМИ В УКРАЇНІ: ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ. Досліджено проблеми забезпечення державою таких соціально-економічних прав і свобод внутрішньо переміщених осіб, як право на житло та право на охорону здоров'я та сформульовано пропозицій щодо оновлення чинного законодавства в цій сфері. Визначено, що постійний збір та обробка даних про потреби внутрішньо переміщених осіб впливають на ефективність національного законодавства в практичній його реалізації щодо соціально-економічних прав і свобод внутрішньо переміщених осіб та гарантій їх реалізації. В Україні відсутній Єдиний державний реєстр державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Акцентовано увагу, на необхідності запровадження та ведення Єдиного державного реєстру державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Такий реєстр надав би можливість державі оперативно та повноцінно вирішувати потреби на житло внутрішньо переміщених осіб, пропонуючи таким особам різні варіанти в різних областях та місцевостях, оскільки такі особи мають право на вибір та свободу пересування, а таким особам змогу реалізувати своє конституційне право на житло обираючи для себе відповідний варіант.

Наголошено на низькому рівні забезпечення медичними послугами внутрішньо переміщених осіб. Визначені причина цього та надані рекомендації щодо виправлення такої ситуації у сфері охорони здоров'я. Так, для отримання медичних послуг внутрішньо переміщеними особами уряду необхідно належним чином фінансувати цю сферу, з урахуванням потреб внутрішньо переміщених осіб.

Ключові слова: *внутрішньо переміщені особи, право на житло, право на здоров'я, медичні послуги, реєстр, житло, кредит.*

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