



# **ENSURING THE RIGHTS AND FREEDOMS OF PEOPLE IN UKRAINE**

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**Authors:** Natalia Opolska, Natalia Chernyschuk, Andrii Pravdiuk, Tetyana Pikovska, Yelyzaveta Tymoshenko, Taisa Tomliak  
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The monograph is devoted to the analysis of historical and legal foundations and practical problems of the rights and freedoms of people. It outlines the main stages in the formation of the concept of rights and freedoms of people in Ukraine. Analyzes the notions and types of rights and freedoms of people. The meaning of the subjective right of freedom of creativity was analyzed. Guarantees of children's rights and freedoms were analyzed. Characterized the informational rights of people. An analysis of the protection of the best interests of the child. The work will be of interest to researchers, students, as well as the number of readers who are interested in the protection of human rights.

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## CHAPTER 2. INDIVIDUAL (CIVIL) AND POLITICAL RIGHTS AND FREEDOMS OF THE PEOPLE IN UKRAINE

**Andrii Pravdiuk** – Candidate of Law Sciences,  
Associate Professor of the Department of Law,  
Vinnytsia National Agrarian University

DOI: <https://doi.org/10.30525/978-9934-26-213-5-2>

### **2.1. The formation of civil society in Ukraine: issues of theory and practice**

The solution of the complex social problems that exist in Ukraine today requires the reform of state institutions and the creation of conditions for the formation of civil society and its effective functioning. A developed civil society is a real precondition for the fullest realization of the rights and freedoms of the people and the citizen. Therefore, nowadays one of the most urgent in Ukraine is the problem of legal regulation of the process of formation and development of the civil society, and especially at the constitutional level.

The development of a democratic, legal and social state in Ukraine is strongly connected with the formation of the civil society. In the present conditions of Ukrainian democracy, the institutions of civil society are still in the process of formation, which means that they cannot exercise full control over state power. However, there are already growing trends<sup>67</sup>.

The tendencies of the participation and increasing role of the institutions of the civil society, which are becoming more and more important, in the mechanism of the realization of the constitutional rights and freedoms of the people and the citizen in Ukraine. Thus, the institutions of the civil society should not completely neglect the state, changing the performance of its basic functions by non-state structures. Without the effective implementation

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<sup>67</sup> Berchenko H.V. *Hromadianske suspilstvo v Ukraini: konstytutsiini aspekty : monohrafiia*. Kharkiv : Yurait, 2014. 208 s.

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by the state of its basic functions, the creation and development of a fully-fledged civil society in Ukraine is impossible.

At the same time, the citizenry is a source of legitimacy for the political forces in power; contacts with the citizenry's organizations are a large-scale source of information for the state about the state of the citizenry, its interests, attitudes, and attitudes towards the political power; in complex historical periods (economic crises, wars, etc.) the citizenry, as a rule, becomes a powerful force that supports and is in solidarity with the state.

The state, having facilitated the formation of the civil society in Ukraine, will give the people the maximum degree of freedom and the right to decide for themselves whether or not to use this or that constitutional right. In the latter case, of primary importance is the thorough legal culture of the population, the improvement of which in Ukraine is not given due respect<sup>68</sup>.

The broadest, most basic definition should be considered as follows: «The civil society is a set of structures by means of which any person initiates socially significant actions without the participation of the state». Thus, in the basis of the formation of the civil society lie the actual life needs and interests of the people, and it is on the basis of the unity of the latter and the problems of their realization that the initiatives are formed by these or other civil society organizations. In this way, civil society promotes the establishment of a social bond between the individual communities.

The current constitutional development and the formation of the model of the rule of law presuppose the necessity of guaranteeing the constitutional and individual rights and legitimate interests of the citizens, among which the right and the real possibility to influence and control the public authorities are essential in the context of the formation of an effective citizenry. Particularly popular nowadays is a type of direct democracy, such as participatory democracy, the essence of which lies in the inclusion of everyone in the process of political decision-making. The grassroots has always played a special role in Ukraine, and history confirms that in independent Ukraine, at all critical stages of the country's development, the grassroots was a force for progressive change and a guarantor of democracy and the European choice.

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<sup>68</sup> Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliev, V.D. Vodnik, O.V. Volianska ta in. ; za red. M.P. Trebina. Kharkiv : Pravo, 2013. 536 s.

One of the most important tasks of contemporary legal science is the study of the problems of civil society as a social phenomenon, which is formed beyond the boundaries of political structures, is not a social institution, one-positional with the state, communal organizations, parties, but has a strong influence on them. The importance of such studies is determined by the necessity to identify the principles and qualitative parameters that characterize the civil society, and the need to reveal the laws of social phenomena as a key problem of social development, science, theory and practice of state-building. However, the formation of the civil society is a process in which the citizens, the society and the state function simultaneously. The level of their rights and obligations is the condition for the preservation and development of the civil society. For its very existence facilitates the establishment of a political bar between society and power, ensures freedom and social justice, and significantly sets the vectors for the development of Ukraine as a sovereign and independent, democratic, social, and legal state.

Nowadays, for the successful development of the civil society, Ukraine has to make low transformations in many spheres of relations between the citizens and the state. Therefore, it is necessary to develop in Ukraine such a system that would be able to determine the forms of interaction between state bodies and the civil society in the perspective with the facilitation of the processes of formation of social minds and perceptions, sufficient and necessary for the solution of social problems<sup>69</sup>.

The analysis of the existing international and international experience allows to reveal and formulate scientifically defined principles, goals, methods, institutional forms and concrete requirements for the further improvement of the Ukrainian civil society in the light of real conditions.

Contemporary civic society should be characterized by productive forms of intelligible generation of actual civic thought, its presentation to the authorities in the process of parity interaction with its different groups, the active forms of self-monitoring and control of joint activity and the responsibility for its results of the representatives of the authorities and civic leaders for the spiritual progress, state development and the advancement

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<sup>69</sup> Pravdiuk A.L. Elektronna demokratiia (kraudsorynh) yak element suchasnykh prav hromadian. *Naukovi innovatsii ta peredovi tekhnolohii*. 2022. № 3 (5). S. 85–97.

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of the welfare of the Ukrainian people. In this regard, it is necessary to refer to other constitutional and legislative changes, in particular to the approval of the 27.09.2021 by the Decree of the President of Ukraine the National Strategy for the Development of the Civil Society in Ukraine, on the corresponding strategic plans of the Cabinet of Ministers of Ukraine, but above all – on the people's initiative and the wisdom of its top representatives<sup>70</sup>.

Nowadays in Ukraine the problem of civil society has become the centre of political and legal studies and discussions. The notion of «civil society» has become a part of the conceptual apparatus of the theory of state and law, political science, sociology, constitutional law, etc.

Nowadays, the terms «civil society» and «rule of law» are often used at different levels and from different sources. Some of them come from the desire to emphasize that, having declared itself sovereign and independent, Ukraine has become a democratic state governed by the rule of law, with a developed citizenry, and others from the desire to show that the development of this type of society and state is a reference of a more distant perspective. The unity of power, citizen, liberty and law, their legal equality before the law, is the basis of the citizen's society and of its non-member companion, the rule of law, although contemporary Ukrainian democracy is characterized by a low level of political and legal culture, legal nihilism, and the weakness of democratic traditions and practices<sup>71</sup>.

Nowadays, the Ukrainian society requires the creation of such a system of social relations in every sphere, which would ensure the stability and effectiveness of the interaction of the community within the limits of the existing social order. The democratic modification of the social order and the further formation of the civic society in Ukraine have a single vector conjugation.

The current transitional stage in the development of Ukrainian statehood poses new questions for legal science concerning the formation of an open, democratic type of society. This is conditioned by its crumbling character,

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<sup>70</sup> Natsionalna stratehiia spriannia rozvytku hromadianskoho suspilstva v Ukraini na 2021-2026 roky: Ukaz Prezydenta Ukrainy vid 27 veresnia. 2021 r. 487/2021. URL: <https://www.president.gov.ua/documents>.

<sup>71</sup> Korniienko V.O. Pravovi osnovy hromadianskoho suspilstva suchasnoi Ukrainy (instytutsiinyi aspekt) : avtoref. dys. ... kand. yuryd. nauk : Nats. un.-t "Odeska yurydychna akademiia". Odesa, 2007. 19 s.



the dependence of its development and essence on changes in state and social life, political, economic, social and other transformations<sup>72</sup>.

According to Fedorenko, the social order is a system of political, economic, social, cultural (spiritual) and other types and strains of social relations, i.e., relations in all basic spheres of life and activity of the society, the system of political, economic, social and spiritual order of the society. The dimension of social relations in Ukraine is constantly changing both quantitatively and qualitatively. This also leads to the existence in Ukraine of an ideologically diverse, religiously diverse, religiously diverse, religiously diverse and religiously diverse citizenry. The social order is a system of organizational and functional forms in all spheres of life and activity of people and society, a system of institutes of the civil society.

In recent years, the social order of Ukraine has been significantly and effectively enriched by new institutions of civil society. In particular, such institutions of the social order as political parties, civic organizations, etc. are gaining their social significance. The social order and the legal foundations of the civil society, as well as the state order, are defined and guaranteed by the Constitution and the laws of Ukraine<sup>73</sup>.

The category of “civil society” is a characteristic feature of the development of a living society in which a high level of affirmation and guarantee of human rights and freedoms has been achieved<sup>74</sup>.

Ukraine’s social order presupposes the organization and functioning of the civil society – the civil society. In the opinion of Y. Shemshuchenko, by its essence, the constitutional order becomes a specific type of constitutional-legal relations, determined by the level of development of the society and the state<sup>75</sup>.

Contemporary scholars understand the citizenry as the most important factor in the development of a good democracy, which has its own specificity, meaning and function in comparison with other types of societies. Thus, the

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<sup>72</sup> Chepik-Trehubenko O.S. Teoretyko-pravovi problemy stanovlennia vidkrytoho suspilstva v Ukraini v umovakh hlobalizatsii. *Forum prava*. 2014. No 3. S. 417–422.

<sup>73</sup> Fedorenko V.L. *Konstytutsiine pravo Ukrainy: pidruchnyk / Do 20-oi richn. Konst. Ukrainy ta 25-oi richn. nezalezh. Ukrainy*. Kyiv : Vyd-vo Lira-K, 2016. 616 s.

<sup>74</sup> Sovhyria O.V., Shuklina N. H. *Konstytutsiine pravo Ukrainy. Povnyi kurs: navch. posib. 2-he vyd., pererob. i dopov.* Kyiv: Yurinkom Inter, 2012. 541 s.

<sup>75</sup> *Konstytutsiine pravo Ukrainy. Akademichnyi kurs: pidruchnyk: U 2 t. Za zah. red. Yu. Shemshuchenka*. Kyiv : Yurydychna dumka, 2008. T. 2. S. 800.

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well-known Ugrian political scientist A. Arato in his «The Concept of the Citizen's Society: Similarities, Decline and Creation...» (1995) proposes to consider it in the context not only of the dyad «state – citizenry», but a «multilateral construct that includes:

- 1) the economic society, which is formed on the basis of forms of ownership;
- 2) economic associations and political society, which is based on the electoral law and political parties;
- 3) the citizenry;
- 4) citizens' associations and ruins»<sup>76</sup>.

The Japanese professor Tujinaka conducted a study of non-commercial organizations in 13 countries of the world and concluded that all these organizations can be divided into 4 types: market (trade unions, economic organisations, rural organisations and similar), non-market (organisations engaged in social support, education, etc.), community sector organizations (engaged in politics, protection of people's rights, as well as the organization of various sports and cultural events) and others<sup>77</sup>.

The literature, which contains the basis of the analysis of the legislation of Ukraine and the European Union the following list of types of civil society organizations is included into the institutions of civil society, and also: communal organisation; association of communal organisations; religious organisation; welfare organisation; employers' organisation; union of trade unions; creative association (other professional organisation); a body of self-organisation of the population; a private establishment; an establishment of the community of citizens or of a religious organisation or of a trade union; an enterprise of a community organisation of invalids<sup>78</sup>.

At the current stage of the development of independent Ukrainian statehood, the creation of a civil society, democratic government and a state governed by the rule of law is a pressing issue, The rule of law in all spheres of public life, the obligation of the State itself and its organs to the law, the

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<sup>76</sup> Osnovy hromadianskoho suspilstva: Slovnnyk: Dlia stud. vyshch. navch. zakl. / N.H. Dzhyncharadze, M.A. Ozhevan, A.V. Tolstoukhov ta in. Kyiv : Znannia Ukrainy, 2006. 232 s.

<sup>77</sup> V Japonii net osobyh problem s narusheniem prav cheloveka. URL: <http://www.hse.ru/news/recent/73374267.html>.

<sup>78</sup> Khto ye orhanizatsiinyi hromadianskoho suspilstva v Ukraini. *Hromadianske suspilstvo*. 2009. № 2. S. 16–19.

sovereignty of individual liberty, and the protection of the rights, interests, honour and dignity of the individual are all guaranteed by law. The rule of law presupposes a broad democratization of all aspects of the life of the society, a change of emphasis towards the development of civic principles. This process is aimed at the liberation of the social forces of the society, the activity and initiative of the people».

The denial of civil rights of the people is not only the guiding principle of the relations between the society and the state. The breadth and reality of these rights, to say the least, bring this or that society to an evaluation that allows us to consider the society as a citizen's one and the state as a legal one. In the interrelationships of the latter, the mechanism of the expanded implementation of the socio-cultural and political-economic environment is formed, which, in turn, through the realization of citizens' rights and freedoms, shapes the human being in all its dimensions – as an individual, a person, a citizen<sup>79</sup>.

Recent years have seen a sharp decline in the number of clear-cut of creative personalities who would have been recognized as the country's unchallenged moral leaders and could have led the complex popular movement to a true democracy, to the citizenry of an independent state. The stage of Ukrainian history was occupied mostly by medieval individuals, and even more so by primitive organisms, even by the Lumpen, when the people needed only talented personalities. But they were either not allowed on this stage, or they themselves did not consider it possible to stay on it<sup>80</sup>.

We guess that in his book “Human Qualities” a member of the Roman Aurelio Peccei, a member of the Club of Rome, insisted that “for all the important role that the questions of its social organization, its institutions, legislation and treaties play in the life of contemporary society, for all the possibility of a created man-made technology, they do not in the final analysis determine the share of mankind.

The problem in the case at hand boils down to human strengths and the ways to improve them. For it is only through the development of human

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<sup>79</sup> Ukrainskyi sotsium / Vlasiuk O.S., Krysachenko V.S., Stepyko M.T. ta in. / Za red. V.S. Krysachenka. Kyiv : Znannia Ukrainy, 2005. 788 s.

<sup>80</sup> Rybalka V.V. Spryiannia rozvytku osobystosti hromadianyna i diievhoho hromadianskoho susilstva zasobamy praktychnoi psykholohii: metod. rekom. Kyiv : Talkom, 2017, 90 s.

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capacities and human capabilities that the change of the whole material-oriented civilization can be achieved and its great potential for good purposes can be fully utilized. A. Pechchei repeatedly stresses that in the conditions of continuous and trilateral action of global and regional crises "...the only way to decency lies through what I call human revolution – through a new humanism that leads to the development of higher human qualities..."<sup>81</sup>.

The legal conditions for the development of the civil society in the period after the independence of Ukraine were established by the Constitution of Ukraine, which was adopted by the Verkhovna Rada on June 28, 1996. The Constitution provides broad guarantees of human rights and freedoms regardless of origin, wealth, status, race, language, religion, political and other affiliations. It shall at all times restrict the activities of the organs of State, which shall be consistent with the principles of the rule of law and shall leave room for civil self-activity and initiative. Article 15 of the Constitution stipulates that "public life in Ukraine shall be based on the principles of political, economic and ideological aggrandizement"; all are guaranteed freedom of political activity, not prohibited by the Constitution and the laws of Ukraine. Articles 34 and 35 guarantee citizens the right to freedom of thought and speech, as well as the right to freedom of opinion and expression. Article 36 of the Constitution provides for the organizational formalization of pluralism through the establishment by citizens of parties and civic organizations, which is the basis for the creation of institutions of civic society in Ukraine. The provisions of the Constitution are specified in laws and other normative acts: decrees of the President, decrees of the Verkhovna Rada and the Cabinet of Ministers of Ukraine<sup>82</sup>.

The formation of the civil society is manifested in the formation of its institutions – good civil communities (economic, cultural-artistic, educational, scientific, protection of the rights of citizens, charitable, etc.); communal collapses and political parties (the latter in the first stages of their formation, not yet established in the mechanisms of power); professional associations; independent mass media, which serve community needs and interests and shape and promote community opinion; community opinion

<sup>81</sup> Pechchei Aurelyo. *Chelovecheskye kachestva*. Moskva : Prohress, 1980. 302 s.

<sup>82</sup> Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliiev, V.D. Vodnik, O.V. Volianska ta in; za red. M. P. Trebina. Kharkiv : Pravo, 2013. 536 s.

as a social institution; elections and referendums as a means of community will and protection of interests; and elections and referendums as a means of community will and protection of interests; independent of the community, elements of the judicial and legal system (juries, people's).

There is a tendency in the West to add to the institutions of the civil society also the institutions of the court-regulatory institutions of the state of the mysterious good<sup>83</sup>.

Civil society is impossible without the existence of a well-developed network of civil society organisations, which are capable of actively influencing the formulation and implementation of state policy, including the development of society as a whole. Public organizations, which, by their activity in various spheres and levels of social life, better understand the essence and specificity of the relevant social problems and the ways of their solution, are the universal mediator between the citizens and the state. The presence of civic organizations in the life of the population is one of the indicators of the democratic character of the state itself. Today, one of the indicators by which the development of civil society in the country is assessed is the inclusion of citizens in the activities of civil society, in the third sector<sup>84</sup>.

The first thing to note is that although the absolute majority of Ukrainian citizens do not belong to a single civic organization, the question of the influence of civic institutions is important. Sociological experiments illustrate that participation in community organizations is perceived as one of the most effective forms of citizen participation in decision-making and governance at the state and local levels<sup>85</sup>. Over the past years, there have been recent positive developments in the functioning of the third sector in Ukraine. This shows that the role of civic organizations in the social and political life of the regions of Ukraine has increased considerably. If earlier the constant ignoring of the population's inquiries conditioned the low level of activity of the NGOs, now the increase of the coefficient of the citizens' activity stimulates the constant activity of the civic organizations.

<sup>83</sup> Kolodii A.F. Na shliakhu do hromadianskoho suspilstva. Teoretychni zasady y sotsiokulturni peredumovy demokratychnoi transformatsii v Ukraini: monohrafiia. Lviv: Chervona Kalyna, 2002. S. 68–69.

<sup>84</sup> Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliev, V.D. Vodnik, O.V. Volianska ta in; za red. M.P. Trebina. Kharkiv : Pravo, 2013. 536 s.

<sup>85</sup> Ukrainiske suspilstvo 1992–2010: Sotsiolohichni monitorynh /NAN Ukrainy, In-t. sotsiolohii; za red. V.M. Vorony, M.O. Shulhy. Kyiv : In-t sotsiolohii NANU : TOV «Foliant», 2010. S. 621.

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In other words, the increase in the scale of activity of the Ukrainian civil society is a legitimate response to the public demand for such an increase.

Among the problems of the Ukrainian civil society, it is worth noting that a significant number of civic organizations are formed to satisfy private interests. It should also be noted that a large number of community organisations are only on the books of the relevant regional justice administrations. One of the problematic factors, in our opinion, is also the absence of long-term strategic planning, and the community organizations themselves are not able to determine what they will do in even one or two months, and most of the time they are only committed to the problem, not to its solution. In our opinion, this is due to the fact that a significant number of civil society organizations are not able to independently publicize their issues, because the mass media do not always promote the visibility of this or that problem. There are also a number of other factors, such as a lack of transparency, lack of communication and support from the public that dampens enthusiasm, a reluctance to cooperate with each other and the politicisation of organisations.

Moreover, over the last three years, the degree of intensity of the division of power with the community has increased significantly. However, there is no evidence of a stable and systematic desire of the local authorities to involve the third sector in the policy-making process. It is more about the desire of certain leaders to act accordingly. Thus, the dialogue between the authorities and the public is not a strategy at all.

Unfortunately, the Ukrainian population has not yet learned enough of the power-centric stereotypes of thinking. In the relationship between the people and the state, the priority does not belong to the people. There is no effective dialogue between the organs of state power and the public in the form of its communal associations and non-legal and orderly organisations. Moreover, the citizens of Ukraine are fully aware of their rights as demands, claims to the state in the person of its authorities as to the provision and protection of these opportunities.

The formation of a civil society is the main reason for the transition from totalitarianism to the rule of law. No one and nothing governs life in a state or changes people who do not want change themselves. An economically and legally viable union, which establishes itself in the world, develops its creativity, and realizes moral values, is the basis of a civil society and the foundation of a state governed by the rule of law. A civil people takes

the state as an instrument. M. Friedman audibly emphasizes that she is not ready to submit to the state as a deity or a lord. For the real people, their state is “a collection of indivisibles that make it up, not a higher institution”<sup>86</sup>.

We can no longer speak of the existence of a civic society as a social phenomenon in Ukraine. However, one of the main problems of its functioning is the excessive stagnation and instability of legal and political activity, which is to a large extent conditioned by the post-totalitarian syndrome of the society<sup>87</sup>. For this reason V. Rechitskiy appreciates: “in totalitarian countries the spontaneous political activity of the citizenry is of a marginal character and, in general, stagnates, and the constitution is no more, than a decorative legal cover of order”, since totalitarianism is based on the presumption of the monopoly of state truth in politics in all spheres of life. The political activity of the citizenry is constrained by its priorities (freedom, dynamism, tolerance), which are directed towards free initiative and pluralism<sup>88</sup>.

A civil society is impossible in the absence of each person’s awareness of his or her own identity, because it is a society of mature individuals: people who demand from the state the realization of their rights, react to the smallest demands for their violation, and in this way prevent the exercise of their rights. The value of civil society lies in the ability of people to think autonomously and to propose solutions to social problems<sup>89</sup>.

## **2.2. The place of civil and political rights and freedoms in the system of human rights**

The rights, freedoms and obligations of the individual and the citizen have always been at the heart of the life of the citizen. The main issue of the 6 years of influence is the people’s access to their own life. In a state-organized government, the access of people to the government is determined by how the government engages and enhances people’s rights and feelings, and how much the government enables people to exercise their power.

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<sup>86</sup> Milton Fridman. Kapitalizm i svoboda. Kyiv : DUKh I LITERA, 2010. 320 s.

<sup>87</sup> Rechickij V. Svoboda i gosudarstvo. Har'kovskaja pravozashhitnaja gruppya. Har'kov : Folio, 1998. 144 s.

<sup>88</sup> Rechickij V. Svoboda i gosudarstvo. Har'kovskaja pravozashhitnaja gruppya. Har'kov : Folio, 1998. 144 s.

<sup>89</sup> Lapaeva V. Tipy pravoponimaniya: pravovaja teorija i praktika: monografija. Moskva : Rossijskaja akademija pravosudija, 2012. 580 s.

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The political environment of the Ukrainian population (including the population of the country's suburbs and municipalities) is pioneering in the sense of The human and the human being's and the citizen's lives are not only in the New Testament, but also in the New Testament, but also in civil regulatory and administrative acts. In the case of the citizens of the Peoples' Republic of Moldova, it was a political phenomenon, which was to be implemented by the State, the cycling and the pepto-political nature of the process and the nature of the messages are very important for this purpose. They all have a higher field of vision than the rest of the world, so they can be seen, they can be seen, they can be seen, they can be seen, they can be seen, the people and the bipolar activity, the beer and the grappling will be effective in the production of five cyclical cyclical inputs to the media.

Thus, the political nature of the human being is not only at the national and national level, but also at the international level<sup>90</sup>.

One of the main elements of the system of human rights is citizens' rights and freedoms, which not only comprise the set of rights and freedoms of the individual and the citizen, as set out in Chapter II "Rights, freedoms and obligations of the person and the citizen" of the Constitution of Ukraine, but also the number of them is considerably greater than it was in the previous constitutions, for example in the Constitution of the Ukrainian SSR of 1978. While in the aforementioned Constitution social and economic rights prevailed, in the current Constitution of Ukraine the first place is occupied by civil rights and freedoms, which are an integral element of human freedom and ensure not only the vital conditions of existence, but also provide the individual with the actual possibility to govern himself freely, guaranteeing non-interference in the sphere of his individual life<sup>91</sup>.

The nature and ways of mankind and the citizen are inevitable and unreliable and do not have a direct impact on human society. The principles of the humanity and humanity and humanity's life in the demographic and social environment are such as these: to establish a new national environment; to establish a new international environment; to establish a new and unique environment; to establish a new and unique environment

<sup>90</sup> Belbo L. Politychni prava i svobody, yikh zmist ta pravovi harantii. *Pravo i suspilstvo*. 2018. № 2(3). S. 3–9.

<sup>91</sup> Konstytutsiia nezaleznoi Ukrainy: navch. posib. / za red. V.F. Pohorilka, Yu.S. Shemshuchenka, V.O. Yevdokymova. Kyiv : In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, Spilka yurystiv Ukrainy, 2000. 428 s.



and to establish a new way of life for people; to make the people and the people's lives more interesting; to make the people and the people's lives more interesting; to make the people and the people's lives more interesting.

The pumps of the better treatment (human and political) are the sources of the other human pumps, as far as they are the basis for the work. As a matter of fact, human beings' political passions and habits are linked to the country's environment and are the key to the relationship between the environment and the labour force. This approach is also important for the political and social integration of the population and the life of the population<sup>92</sup>.

The political rights – this is a type of a person's all-round rights. They are ensuring the security of the country (presumption of innocence and freedom of speech) and they can see it, the system supposed to have a wide range of southern and southern-oriented possibilities (e.g., for example, for a long-lasting cycle of pairs). These rights are defined in the International Covenant on Civil and Political Rights<sup>93</sup>.

The majority of the OON members are members of the Programme for Health and Social Development. The whole of the International Act, which was approved by the UN General Assembly on 16 April 1966, is a part of the UN Convention on the Rights of the Child.

In the case of the development of international relationship, which had just started in the international community, they were able to get into the field of international cooperation.

The Covenant stipulates that in case of a state of emergency in a state for which national life is endangered and the existence of which is formally declared, Participating States may only take measures derogating from their obligations under this instrument to the extent The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

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<sup>92</sup> Ilynska U. Politychni prava i svobody hromadian: normatyvno-pravove zabezpechenniaia ta mehanizmy realizatsii y demokratychnyh derzhavah. *Naykovi pratsi*. Vyp. 185. Mykolaiv, 2012. S. 37–41.

<sup>93</sup> Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: [https://zakon.rada.gov.ua/laws/main/995\\_043](https://zakon.rada.gov.ua/laws/main/995_043).

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The International Covenant states that the transfer of residence (Article 12) and the conditions that must be established for the expulsion of foreigners who legally enter the territory of a member state (Article 13) are prohibited. The articles contain very detailed provisions on equality before courts and tribunals and on the right to a fair trial in criminal and civil proceedings (art. 14). They also provide for the retroactive application of criminal legislation (art. 15), establish the right of every person, where she has not been tortured, to be recognized as legally competent (art. 16) and fictionalize the crime of tortious or unlawful intrusion into a person's life or family, tortious or unlawful encroachment into the privacy of his or her home or the privacy of his or her family (art. 17). Furthermore, the articles protect the right to freedom of opinion, opinion and opinion (art. 18) and the right to hold opinions and to express them in an honest manner<sup>94</sup>.

These rights and rights in different forms are practically declared in the Constitutions of ysic states of the world. They define the legal status of people in the system of socio-political relations and are associated with the participation of people in the formation of socially organized society, the exercise of local government and local self-government, participation in the social life of the community<sup>95</sup>.

Political rights are officially recognized abilities of people, which are provided for by the law. They allow individuals to actively influence the organization and activity of the state and other actors of the political system.

Based on the concept, we can conclude that political rights are a set of rights, which are related to a common meaning and purpose (to improve people's participation in the state and public life<sup>96</sup>).

One of the constitutional principles established in the Basic Law is the political rights and rights of political activity that are not stipulated by the Constitution of Ukraine. Political rights and rights include the following: citizenship, nationality, the right of speech; the right to unite in political parties and community organizations (Article 36); the right to

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<sup>94</sup> Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: [https://zakon.rada.gov.ua/laws/main/995\\_043](https://zakon.rada.gov.ua/laws/main/995_043).

<sup>95</sup> Zavorotchenko T. Harantii realizatsii konstytutsiinyh politychnyh ppav i svobod liudyny i hromadianyna v Ukraini. *Chasopys Kyivskoho universytetu prava*. 2013. № 4. S. 95–99.

<sup>96</sup> Zavorotchenko T. Harantii realizatsii konstytutsiinyh politychnyh ppav i svobod liudyny i hromadianyna v Ukraini. *Chasopys Kyivskoho universytetu prava*. 2013. № 4. S. 95–99.

lead and participate in the activities of political parties and organizations (Article 36). 36); the right to submit individual or collective written appeals to the authorities, local self-government bodies; the right of Ukrainian citizens to hold meetings, rallies, marches, and demonstrations (Art. 39); the right of Ukrainians to participate in the management of state affairs, local referendums, and local self-government bodies (part 1 of article 38); the right of citizens to take part in public hearings, meetings, campaigns, and local self-government bodies (part 2 of article 39); the right of citizens of Ukraine to participate in public affairs and local self-government bodies (part 2 of article 39). The right to equal access to the bodies of government and local self-government (Article 38(1)); the right to equal access to the bodies of government and local self-government (Article 38(2))<sup>97</sup>.

Therefore, political rights and rights are aimed at the realization of the citizen as an active, independent, active participant of the political process. Thus, the detachment of the people from the state is achieved and the fundamental principle of interrelations between a democratic state and its citizens is realized. They can be realized by a person and a citizen both individually and collectively<sup>98</sup>.

Thus, the main purpose of people's rights and freedoms is to ensure the priority of individual and internal development of each person. In our opinion, it is for this group of rights part 3 article 22 of the Constitution of Ukraine establishes the requirements according to which "when adopting new laws or amending existing laws the extent and scope of existing rights and freedoms shall not be changed"<sup>99</sup>.

Among the general features of civil rights and freedoms, which are inherent to all rights and freedoms of people and citizen, are the following: first, civil rights and freedoms of people are fundamental rights and freedoms that are not only stated in international legal acts, but also enshrined in the Constitution of Ukraine. This is the only legal act that has the right to determine their content, scope and limits of implementation. Secondly, these rights have a permanent nature and a special mechanism of implemen-

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<sup>97</sup> Konstitutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy*. 1996. № 30. St. 141.

<sup>98</sup> Ilynska U. Politychni prava i svobody hromadian: normatyvno-pravove zabezpechenniaia ta mehanizmy realizatsii y demokratychnyh derzhavah. *Naykovi pratsi*. Vyp. 185. Mykolaiv, 2012. S. 37–41.

<sup>99</sup> Konstitutsiia Ukrainy: stanom na 4 trav. 2017 r.: vidpovidaie ofits. tekstu. Kyiv : Alerta, 2017. 80 s.

tation. This means that an individual civil right or freedom does not become permanent or emerge once and for all, but is an inherent right of each participant in specific legal relations, that is, each person already possesses a set of rights and freedoms before the emergence of legal relations in a particular area. Thirdly, these rights are meaningful to people because they primarily express the relationship and ties between people and the state. Fourthly, they have a special mechanism of protection, that is, civil rights and freedoms do not oppose the state, which assumes the functions not only of protection and maintenance of these rights, but also ensures them by the entire system of national legislation, by the activities of the bodies of state power, local self-government bodies and their members, political and public organizations, and other legal and physical persons. Finally, civil rights and freedoms are universal, because they apply in all spheres of social life, on the entire territory of the country at any time. Their size and scope are the same for all people, regardless of whether they are citizens of this country or not<sup>100</sup>.

Participation in the management of state affairs as a political right of citizens is exercised through their will at elections and referendums, by means of indirect participation of citizens in the work of legislative, legislative and judicial branches of power. Therefore, the right under conditions of a democratic state is an important right of the citizens, as well as a principle of relations between the state and the citizen.

### **2.3. The right to elect and be elected to bodies of public authority: theory and practice**

In the opinion of J.M. Pustovit believes that political rights and freedoms are opportunities for Ukrainian citizens to participate in the management of state affairs, influence the activities of various state agencies and local self-government bodies<sup>101</sup>.

The right to freedom of opinion, speech, opinion and beliefs as well as their manifestation and expansion, as well as the rights of public organizations of a political nature, and S. Bobrovnyk said that these rights

<sup>100</sup> Kyrychenko Yu. Konstytutsiino-pravove rehuliuвання prav liudyny v Ukraini v konteksti harmonizatsii z zakonodavstvom yevropeiskykh derzhav. dys d.i.u.n. Uzhhorod, 2018. 523 s.

<sup>101</sup> Pustovit Zh.M. Aktualni problemy prav i svobod liudyny i hromadianyna v Ukraini : navch. posib. Kyiv: KNT, 2009. 232 s.

should be respected. S.V. Bobrovnik considers them as a possibility of a citizen to participate in the process of adoption and implementation of political decisions, activity of elements of political system and formation of representative bodies of power<sup>102</sup>. As J.M. Pustovit states, it is political rights and freedoms that provide each person with a possibility to be a self-sufficient subject of social life. With the further development and improvement of democracy political rights and freedoms are becoming deeper, broader in content, diversified in form, which considerably increases their social and political significance and role in the social life and activity of each citizen<sup>103</sup>.

At the same time, it should be noted that political rights and freedoms are the only condition for the functioning of all other types of rights and freedoms, because they form the organic basis of the system of democracy and act as a means of controlling power, as values on which power must orchestrate, encumber itself with these rights, recognize and guarantee them. In other words, the notion of democracy, which is used primarily in the sense of political organization of state-social relations, makes the presence of political rights of people the main factor in the designation of this or that state as democratic<sup>104</sup>.

In addition, the main elements of the legal meaning of constitutional political rights and freedoms are: a) the right to act; b) the right to demand; c) the right to enjoy; d) the right to apply for protection. Thus, the right to freedom of association in political parties and community organizations, to participate in professional associations, which is enshrined in article. 36 of the Constitution of Ukraine, includes the following possibilities: to found any association, to join actively the association in full and to leave it, to realize the statutory objectives and goals of the association, to enjoy the rights, granted by the membership in the association, etc.

As stated by V. M. The majority of constitutions reflect the interpretation of political rights and freedoms in the context of interaction of a person or a citizen with the entire political system of society, which is determined

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<sup>102</sup> Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini: monohrafiia / kol. avtoriv; za red. N.M. Onishchenko, O.V. Zaichuka. Kyiv : Yuryd. dumka, 2007. 424 s.

<sup>103</sup> Pustovit Zh.M. Aktualni problemy prav i svobod liudyny i hromadianyna v Ukraini : navch. posib. Kyiv : KNT, 2009. 232 s.

<sup>104</sup> Kyrychenko Yu. Konstytutsiino-pravove rehuliuвання prav liudyny v Ukraini v konteksti harmonizatsii z zakonodavstvom yevropeiskykh derzhav. dys d.iu.n. Uzhhorod, 2018. 523 s.

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by its class nature, social order, form of government, type of state, nature of political regime, political and ideological and cultural relations in the society, political and legal status of the state, historical and national traditions of political structure<sup>105</sup>. The subjects of the political system include the state, political parties, community organizations, mass media, and local self-government bodies. At the same time, it should be noted that the state is not required to take any positive actions to ensure political rights and freedoms, and must refrain from intrusion into the rights and freedoms that are included in this group, i.e. they are regarded as the freedom of people from the state, the right of people not to be intruded upon by the state<sup>106</sup>.

Therefore, we should agree with the statement that the political system is a totality of state and non-state political institutions that, interacting with each other and the environment, carry out political leadership of society and the management of public affairs<sup>107</sup>.

The highest form of public-political activity is membership in political parties. Political parties to a great extent determine.

The nature and direction of the political process, its stability and civility, the strategy and tactics of the struggle for power, and their influence on the political and legal education of the citizens. The latter are an important element of the institutional basis of the civic society, because they are voluntary communities of citizens and contribute to competitive elections. Representative democracy without parties is impossible.

At the same time it is necessary to take into account that in Ukraine the attitude of the population to the parties is ambiguous. The current stage in the development of the Ukrainian society is characterized by low levels of trust of Ukrainian citizens in government institutions.

Moreover, this is caused by deficiencies in the legal framework, lack of clear instructions and procedures, low legal culture of the election process participants. In a democratic state, the process of struggle of political forces, political parties and the absence of giving primacy to a certain political

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<sup>105</sup> Shapoval V.N. *Sravnitel'noe konstitucionnoe pravo*. Kyiv : Knjaginja Ol'ga, 2007. 416 s.

<sup>106</sup> Kravchenko V.V. *Konstytutsiine pravo Ukrainy: navch. posib*. Kyiv : Atika, 2000. 320 s.

<sup>107</sup> *Polityko-pravova systema Ukrainy: kurs leksii: navch. posib. / za zah. red. V.M. Kyrychenka. Zaporizhzhia : ZNTU, 2016. 204 s.*

force or ideology is natural. «The broad partisanship within the limits of radical ideologies provides the possibility for the citizens to choose a certain vector of development of statehood in the country, the presence of political competition forms a system of «checks and balances» in the ruling institutions. As evidenced by domestic and foreign practice, democratic elections are a form of direct power of the people in a democratic state, so the improvement of national electoral legislation and bringing it into full compliance with international norms and standards is of particular importance<sup>108</sup>.

Elections must guarantee the supremacy of people's will, its involvement in the activities of bodies of state power, a high level of responsibility of the state before the civil society. Ensuring free, equal, fair – indeed democratic – political elections is one of the most important tasks of both the state and the society. The process of improving the political and legal framework for the functioning of the electoral system can be regarded as the most important condition for increasing the efficiency of organization and conduct of elections, ensuring and protecting the political rights of citizens.

Elections to legislative and representative bodies of power play an extremely important role in politics. They are not only the main institution, but also a litmus test of the development of democracy and the attitude of the state to human rights in general. The way the electoral process is organized, the degree of its democracy, the activity of the voters, etc., determine the quality of the leading party of the country that we elect and, accordingly, the share of the country. It is assumed that in a democracy the government must act in the interests of the majority, but this is not always the case. It is clear that the interests of political subjects do not always coincide with real national or public needs. This is natural, because the political force that comes to power is most concerned about maintaining its position, and therefore it tends to act in its own interests, which are not necessarily in line with those of society<sup>109</sup>.

The process of power formation in Ukraine develops under conditions of increased social pressure, which is typical for all transition political

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<sup>108</sup> Pravdiuk A.L. Instytut vyboriv v ukraini yak osnova rozvytku hromadianskoho suspilstva ta rozbudovy demokratychnoi derzhavy. *Jurnalul juridic național: teorie și practică*". 2020. № 3 (43). P. 10–17.

<sup>109</sup> Pravdiuk A.L., Petryshche L.Ia. Vyborcha inzheneriia v konteksti politychnykh transformatsii. *Naukovi innovatsii taпередovi tekhnologii*. 2022. № 2 (4). S. 99–110.

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systems. The Constitution of Ukraine determines that people are the bearer of sovereignty and the only source of power in Ukraine, accordingly, civic activism is an integral part of political relations and is the source of policy formation<sup>110</sup>.

This leads to the idea that the community community is the main guarantor of the fact that the state power cannot be usurped and used not for the benefit of the people. Ideally, cooperation between the institution of power and the civil society should be based on constructive, functional principles<sup>111</sup>.

The process of establishment of the electoral system of Ukraine has been long since the beginning of the 90s of the XX century. Proper legislative support and law enforcement practice are important in view of the phenomenological political and legal nature of elections as a form of direct ownership of the people, prescribed by the constitutional and other legislative acts of the majority of modern states. The Constitution of Ukraine, in accordance with generally recognized international legal standards, establishes the right to participate in the management of state affairs, in national and local referendums, to elect and be elected to bodies of state power and bodies of local self-government. The latter are the fundamental, most extensive and effective forms of participation of Ukrainian citizens in the management of state affairs. Elections, together with other democratic legal institutions, allow the people to act as a real source of power, identify their representatives and give them a mandate to exercise their sovereign rights, as well as the civil society to control the state, its organizations and officials<sup>112</sup>.

In the constitutional experience it has long been generally accepted that citizenship is one of the most important requirements for acquiring and exercising the subjective electoral right. Among all constitutional and legal statuses it is citizenship that provides the most benefits for an individual, especially when it comes to political rights and participation

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<sup>110</sup> Pravdiuk A.L. Instytut vyboriv v ukraini yak osnova rozvytku hromadianskoho suspilstva ta rozbudovy demokratychnoi derzhavy. *Jurnalul juridic național: teorie și practică*. 2020. № 3 (43). P. 10–17.

<sup>111</sup> Chumakov D.D. Problema rozvytku hromadianskoho suspilstva v ukraini v konteksti yoho vzaiemodii z instytutom derzhavy. *Hrani*. 2014. No 6. S. 131–135.

<sup>112</sup> Didenko O. Ideolohichni harantii prava obyraty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofski ta metodologichni problemi prava*. 2021. № 1 (21). S. 29–36.



in the management of state affairs. Therefore it is quite logical that the people in the legal sense make up the concept of «the people,» which in the majority of constitutions of states, including Ukraine, is recognized as the bearer of sovereignty and the only source of power in the state<sup>113</sup>.

Citizenship is the key condition for exercising a person's electoral right in most countries of the world, including Ukraine. Ukrainian citizenship, according to Article 1 of the Law of Ukraine «On Citizenship of Ukraine,» is «a legal bond between a natural person and Ukraine that takes its shape in their mutual rights and obligations. The citizen of Ukraine is a person who acquired Ukrainian citizenship in accordance with the procedure prescribed by the laws of Ukraine and international treaties of Ukraine»<sup>114</sup>.

Under constitutional law, citizenship as a condition for a person to obtain and exercise electoral rights is accepted to be called the «citizenship requirement» (Citizenship requirement, Nationality requirement), which has long been an obsolete legal category. The document of the Venice Commission «European Democratic Heritage» (Europe's Electoral Heritage, CDL (2002) 7 rev.) of 2002 stated that electoral rights are always conditioned by citizenship, and most countries «make political rights dependent on citizenship»<sup>115</sup>.

The regulation of relations that ensure implementation of constitutional election rights by Ukrainian citizens during elections and referendums is carried out with the help of the totality of legal norms that make up the election legislation of Ukraine. These are the Constitution of Ukraine, the Electoral Code of Ukraine, the laws of Ukraine On the Election of the President of Ukraine, On the Election of the People's Deputies of Ukraine, On the Election of the Deputies to the Supreme Council of the Autonomous Republic of Crimea, The Code of Administrative Offences and the Code of Administrative Offences of Ukraine, «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea», «On Elections of

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<sup>113</sup> Konstitutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy*. 1996. № 30. St. 141.

<sup>114</sup> Pro hromadianstvo Ukrainy: Zakon Ukrainy vid 18 sichnia 2001 roku № 2235-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 13. St. 65.

<sup>115</sup> Europe's Electoral Heritage (CDL (2002) 7 rev.). Venice Commission. Strasbourg, 2002. 35 p.

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Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea», «On Local Councils and Village, Village and Municipal Governors», «On All-Ukrainian Referendum», «On the Central Electoral Commission», «On the State Register of Electors», The Criminal Code of Ukraine, the relevant decrees of the President of Ukraine, decrees and orders of the Cabinet of Ministers of Ukraine, decisions of the Central Election Commission, and binding international treaties, Agreements that enshrine the universally recognized international standards for the protection of human rights, approved by the Supreme Council of Ukraine, other legislative acts.

International legal acts pay a lot of attention to the elections and the internal information exchange in the electoral process. The Declaration of the Rights of Persons and Citizens states in its articles that everyone has the right to freedom of opinion and to free expression of their views. This right includes the freedom to hold opinions without interference, to receive and impart information and ideas by any means necessary, regardless of frontiers (Article 19).

Article 21 of the Declaration stipulates that the will of the people must be the basis of the authority of the government; it must be manifested in periodic and genuine elections, which must be held under a universal and equal suffrage by a secret ballot or through other equivalent forms that ensure the freedom to vote<sup>116</sup>.

In the context of the electoral process, the norms of the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which give a clear understanding of the fact, The electioneer must have all the information about the candidates, political parties and their programs, the mass media can and must reflect all stages of the popular will. Only in the presence of such conditions it is possible to make a clear, informed choice of professional, respected leaders of the state. The development of Ukraine as a democratic state requires creating reliable mechanisms for implementing the principle of people's sovereignty by improving the electoral law as a political law based on the nature of the right to vote. By its nature, the right of citizens «to elect and be elected by the bodies of

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<sup>116</sup> Zahalna deklaratsiia prav liudyny. Pryniata i proholoshena rezoliutsiieiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: [http://zakon1.rada.gov.ua/laws/show/995\\_015](http://zakon1.rada.gov.ua/laws/show/995_015).

state power and bodies of local self-government» (part one of Article 38 of the Constitution of Ukraine) and as a constitutional and legal institution, That is, the system of norms that determine the procedure for organizing and conducting elections as a mechanism for exercising the rule of the people<sup>117</sup>.

Apart from the constitutional and legal regulation of the guarantees of the right to elect and to be elected to the bodies of public power in Ukraine, it should be noted that they are also included in the low level of normative legal acts of another level. Thus, the Electoral Code of Ukraine, in accordance with the Constitution of Ukraine, determines the guarantees of citizens' rights to participate in elections and regulates the preparation and carrying out of elections of the President of Ukraine, The Constitution of Ukraine establishes the guarantees of the rights of citizens to participate in elections and regulates the preparation and conduct of elections of the President of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, regional, district, village, city, district councils in cities, village, village, and city heads<sup>118</sup>.

However, it should be noted that not all citizens of Ukraine can be participants in the electoral process. The Constitution and electoral legislation define the electoral qualifications of citizens. Electoral qualifications are constitutionally established and detailed in the electoral legislation special conditions for obtaining and exercising the right to vote. Electoral qualifications in the science and practice of election law are often referred to as «electoral qualifications». The notion of election qualifications was defined in the Decision of the Constitutional Court of Ukraine dated June 30, 2002 2-rp/2002 in the case of the election campaign, which is described as «conditions for the active and passive suffrage rights that are determined by the Constitution or the law<sup>119</sup>.

As a general rule, under the normative-legal establishment of electoral qualifications, the constitution of the state prevails, and then the electoral

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<sup>117</sup> Konstitutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy*. 1996. № 30. St. 141.

<sup>118</sup> Didenko O. Ideolohichni harantii prava obyryaty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofki ta metodologichni problemi prava*. 2021. № 1 (21) S. 29–36.

<sup>119</sup> Rishennia Konstytutsiinoho Sudu Ukrainy vid 30 sichnia 2002 roku № 2-rp/2002 (sprava pro vyborchu zastavu). *Ofitsiinyi visnyk Ukrainy*. 2002. № 6. St. 245.

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laws. This means that electoral qualifications cannot be established by laws, if they are not directly stipulated by the constitution of the state. If an electoral law establishes an electoral qualification that is not directly stipulated by the constitution of the state, it will be declared unconstitutional later on, as a rule. The formula of electoral qualifications is as follows: the more electoral qualifications and the higher the conditions for their attainment, the less the number of persons will be able to attain the subjective electoral right. As a general rule, electoral qualifications are the implementation of active and passive suffrage differ significantly due to different requirements for their attainment. The higher requirements are set for the implementation of passive suffrage<sup>120</sup>.

According to Article 70 of the Constitution of Ukraine, all citizens who have reached the age of 18 on the day of voting have the right to vote.

In addition to the Basic Law of our state, the right to free elections<sup>121</sup> is also enshrined in the lower provisions of international legal documents. Article 25 of the International Covenant on Civil and Political Rights (ratified by the Decree of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic of 19 June 1973. No. 2148-VII) reads the following: «Every citizen, without any discrimination and without any unnecessary restrictions, must have the right and the opportunity to take part in the conduct of public affairs, both indirectly and through the mediation of legally elected representatives, as well as to vote and be elected at genuine periodic elections, which are held on the basis of general and equal electoral law with a secret ballot and ensure the free will of the electors»<sup>122</sup>.

According to Article 3 of the First Protocol to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Supreme Council of Ukraine in the Law No 475/97-VR of June 17, 1997 («The Right to Free Elections»), The Law enshrines the obligation of the authorities to hold free elections at

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<sup>120</sup> Nesterovych V. Vydy vyborchkykh tsenziv: zarubizhna ta Ukrainka praktyka. DOI: [https://doi.org/10.32689/2617-9660-2021-6\(18\)-113-165](https://doi.org/10.32689/2617-9660-2021-6(18)-113-165).

<sup>121</sup> Konstytutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnya 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy*. 1996. № 30. St. 141.

<sup>122</sup> Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: [https://zakon.rada.gov.ua/laws/main/995\\_043](https://zakon.rada.gov.ua/laws/main/995_043).

reasonable intervals by a secret ballot under conditions that ensure a free expression of the people's opinion in the election of the legislative body<sup>123</sup>.

The Declaration on the Criteria for Free and Fair Elections was adopted at the 154th session of the Rada of the Inter-Parliamentary Union (of which Ukraine is a member). 6 point 2 of the Declaration states: «Each voter has the right to exercise his right on an equal basis with other voters, and his vote has the same weight as the votes of other voters. Although such a request must be a kind of warrant, however, it is legally impossible at this moment to achieve absolutely equal «weight» of votes of all electors (only due to mathematical fluctuations of circumstances)»<sup>124</sup>.

The Constitution of Ukraine declares the principle of equal suffrage in Article 71 and repeats it in Articles 76, 103, 136 and 141. 76, 103, 136 and 141. The current domestic legislation directly applies the principle of equal suffrage of voters (i.e. in terms of the right to vote) and candidates (in terms of passive suffrage), establishing at the same time both the equality of the scope of rights and the equality of legal opportunities to act in the electoral process. The Constitutional Court of Ukraine has interpreted the constitutional principle of equal suffrage in the sense that “the Constitution provides and guarantees equal legal opportunities for realization of their electoral rights to all voters and candidates for deputies of Ukraine” (para. 1 point 10 of the motive part of the decision of 26 February 1998)<sup>125</sup>.

As for the modern electoral legislation, it is worth mentioning the adoption of the Electoral Code of Ukraine of 19.12.2019 that replaced and codified a number of normative legal acts of this sphere. Article 6 of the Code states that the electoral rights of citizens of Ukraine are their rights to participate in elections that are taking place in Ukraine as guaranteed by the Constitution of Ukraine and the following elections rights of Ukrainian citizens included:

- 1) the right to vote in elections (the right to vote at the elections);
- 2) the right to be elected.

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<sup>123</sup> Protokol Pershyi do Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod. *Oftsiiyni visnyk Ukrainy*. 2006. No 32. S. 453.

<sup>124</sup> Members of the International organization of Parliaments. URL: <http://www.ipu.org/english/membshp.htm>.

<sup>125</sup> Rishennia Konstytutsiinoho Sudu Ukrainy vid 26 liutoho 1998 r. No 1-rp/98 (sprava pro vybory narodnykh deputativ Ukrainy). *Oftsiiyni visnyk Ukrainy*. 1998. No 23. St. 850.

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Citizens who have reached the age of 18 on the day of the election are granted the right to vote. The Venice Commission points out that certain age limitations on the right to vote and the right to be elected have a substantive basis and are not discriminatory. It is believed that the denial of voting rights of persons without disabilities is due to the physiological development of such persons and the lack of experience of such persons in society to evaluate the candidates and their programs.

The age qualification is extremely important for the implementation of passive suffrage, because a citizen who has shown a desire to represent and defend the interests of the people needs experience, formed views, principles, own understanding of the possible ways of solving this or that problem. Age is an indicator of qualification, social and political maturity. Acquisition of the passive electoral right depends on the type of elections. According to part. According to part 1 of Article 134 of the Electoral Code, a citizen of Ukraine, who has reached the age of 21 on the day of elections, may become a people's deputy, and part 1 of Article 193 of the Electoral Code stipulates that a citizen of Ukraine who has the right to vote according to Article 70 of the Constitution of Ukraine may become a deputy, a village, town or city mayor<sup>126</sup>.

The provision of Article 70(2) of the Constitution relinquishes this right to citizens who have been declared ineligible by a court. This provision is closely intertwined with the civil-law institute of incapacity in civil law. Under Article 39 of the Civil Code, a physical person may be declared invalid by the court if due to a chronic, persistent mental disorder he or she is not able to understand the meaning of his or her actions and (or) control them. An invalid physical person is subject to supervision. A disqualified individual is not entitled to commit any crime (art. 41). The procedure for declaring a citizen ineligible is set forth in the civil procedure law (Chapter 4 of the Civil Procedure Code)<sup>127</sup>.

As noted by V. Sereda, the current trends in the development of the Ukrainian society have put the problem of citizenship as a state and as a person in the foreground of community life. At the same time sometimes

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<sup>126</sup> Pakhomov A.V. Do pytan'nia zahal'nogo vyborchoho prava. *Iurydychnyi naukovyi elektronnyi zhurnal*. 2021. № 1. S. 97–101.

<sup>127</sup> Dakhova I.I. Konstytutsiyni pryntsyyp zahal'nogo vyborchoho prava. *Visnyk Kharkivskoho natsional'nogo universytetu imeni V.N. Karazina. Ser. Pravo*. 2013. No 1082, vyp. 16. S. 69–73.

the right to elect and be elected as one of the priority rights of Ukrainian citizens guaranteed by the Constitution, Sometimes most Ukrainians perceive it as declarative, because for years the voters have for most years been inclined to think that nothing depends on their will. Voters, especially young ones, or more precisely, very young ones, are reconstitently declaring that they have no one to choose from and that nothing really depends on them. With the development of democratic processes in Ukraine, young people's enthusiasm for participation in government is becoming more and more noticeable year by year. Therefore the analysis of certain factors that influence the formation of civic consciousness of young voters, in particular civic education and state youth policy, is of current interest today<sup>128</sup>.

Of course, as well as the awareness of citizens, the situation in the political and legal environment of Ukraine is changing significantly. It is important to have coordinated and effective actions of the authorized bodies and officials of the state and cooperation with the public aimed at making positive changes in this direction, Raising the legal culture of the population, officials and employees involved in preparing and holding elections, training of members of election commissions and other election process actors; Implementing educational projects and programs, organizing and conducting information campaigns aimed at explaining the electoral rights of the citizens, the provisions of the electoral law and peculiarities of the electoral process; assisting in organizing experiments and pilot projects during the electoral process<sup>129</sup>.

We can note that there are still many unsolved tasks, in particular, it is necessary to prevent and counteract negative phenomena in the process of implementation of ideological and other guarantees of the right to elect and be elected to the bodies of state power and local self-government bodies.

This is confirmed by the provision of the National strategy in the sphere of human rights, approved by the Decree of the President of Ukraine from March, 24, 2021. Thus, one of the strategic goals of the strategy is to ensure the right of citizens to freely choose and be elected to the bodies of state power and local self-government bodies with respect to international, including European, standards.

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128 Sereda V. Vplyv hromadianskoho vykhovannia na formuvannia pravovoi kultury molodykh vybortiv. URL: [https://www.cvk.gov.ua/wp-content/uploads/2020/06/2007\\_2\\_Visnik\\_Cvk.pdf](https://www.cvk.gov.ua/wp-content/uploads/2020/06/2007_2_Visnik_Cvk.pdf).

129 Didenko O. Ideolohichni harantii prava obyraty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofski ta metodologichni problemi prava*. 2021. № 1 (21). S. 29–36.

Among the tasks aimed at achieving this goal, the following are highlighted: To ensure smooth participation of persons with disabilities in the electoral process; to create conditions for the implementation of electronic democracy; to improve the mechanisms of interaction between institutions of the civil society and local self-government bodies. Thus, the electoral process must be accessible and inclusive<sup>130</sup>.

The state power must be controlled by the people, then it has fewer opportunities to operate in violation of the standards of law. Today the legitimacy of power is necessary for stable democratic states of the civil society. These are the societies that have a transparent electoral system, a proper procedure for the formation of bodies of state power, a highly developed judicial system, a large number of legally aware and law-abiding citizens, and a developed social sphere.

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<sup>130</sup> Natsionalna stratehiia u sferi prav liudyny: Ukaz Prezydenta Ukrainy vid 24 berez. 2021 r. № 119/2021. URL: <https://www.president.gov.ua/documents/1192021-37537>.



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