

DEVELOPMENT OF CONSTITUTIONAL LAW ON THE TERRITORY OF UKRAINE (IX – XVIII centuries)

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Summary: INTRODUCTION. I. DEMOCRATIC PRINCIPLES OF KIEVAN RUS AND THE GALICIA-VOLYN PRINCIPALITY. II THE GRAND DUCHY OF LITHUANIA AND THE POLISH-LITHUANIA COMMONWEALTH – THE WAY TO "UKRAINE". III. ORIGIN AND DEVELOPMENT OF UKRAINIAN CONSTITUTIONALISM. IV. CONCLUSIONS

Abstract: The article is devoted to the history of formation and development of Ukrainian constitutionalism. It is shown that during the times of Kievan Rus and the Galicia-Volyn principality monarchical states with elements of a democratic state and political regime were formed on Ukrainian lands. It is highlighted that the formation of the Ukrainian nation and its path to its own state was carried out under the conditions of aristocratic democracy of the Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth. It is emphasized that the Ukrainian people in the XV century became part of a large European society, which became the basis for the emergence of constitutional ideas in the Ukrainian ethnic lands, the creation of the Cossacks and the revival of their own Ukrainian state in the former Kievan Rus. It is noted that the results of the development of Ukrainian constitutionalism in the eighteenth century was presented in the Constitution of Hetman P. Orlyk in 1710, which became one of the most democratic constitutions in Europe at that time.

Key Words: constitutional law of Ukraine, Constitution of P. Orlyk, constitutional principles of the Zaporizhia Army, history of law

INTRODUCTION

State law has been developing in Ukraine for over a thousand years along with the basic principles of state formation. Many historians claim that Ukraine did not exist in the days of our ancestors, so we cannot identify ourselves with them. We do not share this thought and support the opinion of M.S. Hrushevsky that Kievan Rus was an ancient Ukrainian state.

In general M.S. Hrushevsky a notorious figure in the history of modern Ukraine – scientist-historian, professor at Lviv University, public and political figure, revolutionary, chairman of the Central Council, chairman of the Shevchenko Scientific Society (ShSS) in Lviv, founder of Ukrainian scientific historiography – he stood on the grounds of modern Ukrainian statehood. He authored a 10-volume monograph «History of Ukraine-Rus'», banned by the Russian government, in which he justified the idea that the Ukrainian people were a separate ethnic group, different from the Russian and other East Slavic peoples, whose active development began in the middle of the first millennium A.D. The scholar considered Kievan Rus as an ancient form of Ukrainian

statehood and the Ukrainian people as a hegemon in the state inheritance of Kievan Rus. This was his own theory of the origin and development of the statehood of the Ukrainian people. Therefore, he was sharply negative regarding the idea of collecting Russian lands under a single Russian flag. He relied on Ukrainocentrism and rejected the general principles of all-Russian history. After the events of 1905, when the tsarist policy towards the national development of the Ukrainian people was weakened, he based his political views on the principles of constitutional parliamentarism and autonomy of Ukraine.¹

I. DEMOCRATIC PRINCIPLES OF KIEVAN RUS AND THE GALICIA-VOLYN PRINCIPALITY

We have several common features of the state with our ancestors. This is both the Ukrainian ethnic territory, and the people who have lived in these lands since time immemorial, and the law that has passed to us, changing from one normative legal act to another, the power that the Ukrainian people both had and lost. We have a lot in common with our ancestors. And first of all, these are the original traditions that connect all these features of the state with modernity, and which are firmly engraved in the genetic code of the Ukrainian people.

The most important of all these features of the state is state power, so at different times at the head of the Ukrainian government were different rulers: in Kievan Rus – the founder of the ancient Russian state Prince Oleg, Prince Igor and his wife Olga, Princes Vladimir the Great, Yaroslav the Wise, Vladimir Monomakh; in the Galicia-Volyn principality – Danylo Halytsky; in the Grand Duchy of Lithuania – Princes Gediminids; during the Cossack era – Bohdan Khmelnytsky, Ivan Mazepa, Philip Orlyk; of the Ukrainian People's Republic – M. Hrushevsky, P. Skoropadsky, V. Vynnychenko.

Historically, state power has only two main forms: the monarchy and the republic. Until the XIX century, Ukraine was mainly under a monarchical form of government, but not necessarily absolute, ie with elements of parliamentarism.

Kievan Rus of the IX century was an early feudal state, where the ruling class consisted of princes and boyars. The country was headed by the Grand Prince of Kiev, who obeyed the local princes, who had some autonomy within their region. They were mutually beneficial to each other. Therefore, Kievan Rus can be called an early feudal monarchy, a federation with elements of democracy.

The first Kyivan princes Oleg, Igor, and Svyatoslav had almost unlimited power. Relying on a militia unit, they maintained order in society. In addition to the princes, there was a separate body of power in Kievan Rus – the Boyar Duma, which included representatives of the boyar families. And the people's opinion was represented by the Veche – the people's assembly, which the great princes could not ignore. Representatives of all segments of the population, from boyars to peasants, gathered at the Veche. Various important issues were considered there: the decision on a military campaign, the system of government, the court.

Judicial proceedings were also carried out by the prince or representatives of the princely administration and church bodies, first with the help of customary law, and later with a codified collection of legal norms – «Rus' Justice», compiled

¹ Hrushevskiy M.S. History of Ukraine-Rus. Vol. 2: XI-XIII centuries. Lviv, 1899. 403 p.

by Yaroslav the Wise. Rus' Justice enshrined the position of certain classes of the population, responsibility for crimes, the commission of civil transactions, and more. Kievan Rus was a powerful state of Eastern Europe in the period of IX – XIII centuries, which covered an area of over 1 million km², inhabited by 4.5 million people. For those times, these are huge numbers.²

At the head of the Galicia-Volyn state, there was a prince who had supreme power, passed legislation, exercised management and justice, controlled the taxation and minting of coins, led the army, and solved the issues of foreign policy and economics, controlled church affairs. In 1253 he received the crown of the papal envoy from Rome and became the king of Rus'. In addition to the crown, during his reign there appeared such attributes of power as the coat of arms-tryzub, a yellow-blue flag with a red lion in the background, and a seal.

In addition to the prince, the Galician-Volyn state was ruled by the boyar government, which included large landowners, the Galician bishop, a judge of the prince's court, voivodes, and governors. The Galicia-Volyn state also had a strong army, which performed an external protective function and internally provided power to the prince and boyars. The army was recruited from the locals. At the beginning of the XIV century, some Ukrainian cities began to receive the Magdeburg rights.

Thus, during his reign, King Danylo Halytsky created a monarchical state with elements of a democratic state and political regime, which existed as a successful country for another 100 years after his death.

The legal culture of Kievan Rus was very developed, so it later spread to the Galicia-Volyn principality and the Russo-Lithuanian state. The norms of «Rus' Justice» and Ukrainian customary law changed with the socio-political development of these states, in particular the spread of feudalism.³

II. THE GRAND DUCHY OF LITHUANIA AND THE POLISH-LITHUANIA COMMONWEALTH - THE WAY TO "UKRAINE"

During the era of the Lithuanian-Russian state, there was a reshuffling of spheres of influence – there was a tendency to narrow the rules of customary law and establish the priority of positive law, ie state legislation. The main sources of state law were the privileges (charters) of the Grand Duke, as well as treaties, instructions, letters, charters, statutes, universals, articles, sentences, and decrees.⁴

Later, when the Lithuanian-Russian state became the Grand Duchy of Lithuania, the latter became a classic feudal state. And characteristically, the socio-legal status of various segments of the population was determined not by nationality but by the size of land ownership, which the feudal lords received by buying and selling land, taking communal lands, developing vacant lands, and princely awards.

² Tolochko O.P. Tolochko P.P. Kievan Rus. Kyiv, 2001.

³ Terliuk I.Ya. Peculiarities of the legal system of the Galician-Volyn state / History of the state and law of Ukraine. Retrieved from https://pidru4niki.com/1924070145434/pravo/osoblivosti_pravovoyi_sistemi_galitsko-volinskoyi_derzhavi

⁴ Terliuk I.Ya. Sources of law of the Lithuanian-Russian state / History of the state and law of Ukraine. Retrieved from https://pidru4niki.com/1259060545440/pravo/dzherela_prava_litovsko-ruskoyi_derzhavi

Thus, over time, as early as the beginning of the XVI century, a separate section of the population – magnates – formed, these were large landowners who, thanks to their economic power, acquired broad political rights and privileges. Medium and small feudal lords were called gentry. The second-largest stratum of the population was the peasantry, which was divided among themselves by varying degrees of feudal dependence. And the third large-class were the burghers – the urban population. There, too, was own gradation: the wealthiest merchants, middle merchants, and urban lower classes.

An administrative apparatus was formed near the prince. But his power was not absolute. The powers of the Grand Prince were limited by the Sejm, – a permanent legislative, executive, and judicial body. From the end of the XV century, all the prince's activities were carried out only with the consent of the Sejm.

In the II half of the XV century, a major administrative and territorial reform took place in the GDL⁵, which was aimed at abolishing the state autonomy of the Ukrainian lands. Lithuania brought the system of local government in the Ukrainian lands closer to the system that existed in Poland due to the planned Lublin Union – the unification of the Kingdom of Poland and the Grand Duchy of Lithuania into a single state – the Polish-Lithuanian Commonwealth, which happened in 1569. Thus, the administrative-territorial system was unified in the Ukrainian lands that were part of Poland and Lithuania. As we can see, the GDL was a monarchical state with elements of parliamentarism.⁶

The entire territory of the Polish-Lithuanian Commonwealth was divided into three parts: Greater Poland, Lesser Poland (Ukraine), and Lithuania. The head of state was the king. Until 1573, the crown was inherited, from 1573 to 1795 – the monarch was elected by the Sejm.

The legislature was the Sejm, which consisted of two chambers: the highest, which included government officials and senior clergy, and the lower – the Zemstvo Council, which consisted of representatives of the nobility. Under the king, there was a permanent Senate Council. Every two years, the king was obliged to convene the Sejm, which decided on important state issues.

In the Polish-Lithuanian Commonwealth, the principle of *Liberum veto* (free veto), operated, which allowed each deputy of the Sejm to oppose and thus stop discussing the issue. In the Sejm each nobleman represented his area, was chosen by it, therefore was responsible to it for the decision of the Sejm. The decision was to be unanimous. And the decision of the majority against the minority was considered a violation of the principle of political equality.

In addition, the country had a law «*Nihil Novi*» (nothing new without general consent), which forbade kings to pass laws without the consent of the nobility. This law was signed in 1505, and it went down in history as the «*Radom Constitution*», which was the last step in the process of forming a noble republic (noble democracy) in the Polish-Lithuanian Commonwealth. This political regime gave the nobility broad powers to govern the country. In addition, in the Polish-

⁵ GDL – Grand Duchy of Lithuania

⁶ Zaruba V.M. History of State and Law of Ukraine: Textbook. Kyiv: Istyna, 2006. 416 p.

Lithuanian Commonwealth, power was divided into three branches – the main feature of democracy. The executive power was represented by the monarch, the legislature – by sejms and sejmiks, the judiciary – by the courts.⁷

By the way, it was from the moment Ukrainian ethnic lands became part of the Polish-Lithuanian Commonwealth that they were unofficially called «Ukraine». Although the name itself dates back to the times of Kievan Rus – in written sources it appears in the XII century. Later, in the XVII – XVIII centuries, the name «Ukraine» will become synonymous with the name «Zaporozhian Army», «Hetmanate» and «Little Russia». During the reign of B. Khmelnytsky, it will be used in documents and works of folk art. With the development of Ukrainian national consciousness, the importance of this concept will increase in the late XIX century, the term «Ukraine» will be used to name the entire Ukrainian ethnic territory as a completely independent and nationally formed concept.⁸

III. ORIGIN AND DEVELOPMENT OF UKRAINIAN CONSTITUTIONALISM

But back to constitutionalism. It dates back to ancient Greece and the Roman Empire and is a form of liberalism. In the period under study, it reflected the transformation of feudalism into capitalism, when the bourgeois class was actively developing. After all, under feudalism, man as a unit did not matter, and under capitalism, ideas of equality and individual freedom began to emerge. Of course, these ideas were first formed in the works of philosophers and thinkers.

The ideas of constitutionalism and liberalism are best suited to a society where there are elements of democracy, as observed in the Polish-Lithuanian Commonwealth. Thus, the Ukrainian people in the XV century became part of a large European society. Simultaneously with the gradual enslavement of the Ukrainian peasantry, in general, Ukrainians living in the Commonwealth developed in the conditions of Western civilization, which strengthened the integration of Ukrainian ethnic lands into Europe. This had an impact on Ukrainian legal culture and legal awareness and strengthened relations between Ukrainian regions. There were formed the conditions for the emergence of constitutional ideas.

This process led to the fact that educated and nationally conscious Ukrainians had a desire to revive their own Ukrainian state on the territory of the former Kievan Rus. At the end of the XV century, the Ukrainian Cossacks emerged from this desire, which became the leading Ukrainian social stratum and began to influence all other Ukrainian regions from Zaporizhzhia.

The first Ukrainian philosopher to represent liberalism was the Polish priest Stanislav Roksolan-Orikhovsky (1513–1566), who was one of the first to deny the divine origin of power and considered the state to be a union of citizens bound by a common legal system. He promoted the ideas of freedom as the most important property of mankind, developed the concept of natural law, substantiated certain

⁷ Zashkilniak L.O. Krykun M.H. History of Poland: From ancient times to the present day. Lviv, 2002. 752 p.

⁸ Ponomarov A.P. Ethnicity and ethnic history of Ukraine: a course of lectures. Kyiv: Lybid, 1996. 272 p.

elements of the state of law (freedom, equality, justice, rule of law, the legal status of the monarch, senate, the relationship of a natural and positive law).

His famous works are: «On Natural Law», «Parting Words to the Polish King Sigismund Augustus» (1543), «The Chronicles» (1554), and others, in which he expressed the view that a healthy and strong state could exist only under the rule of law, when all segments of the population would adhere to legal norms (such as the Roman Empire), the development of liberalism, based on the principle of individual freedom.⁹

The work of S. Orikhovsky was continued by other Ukrainian philosophers, thinkers, and statesmen. Joseph Vereshchynsky (1530–1599) – Ukrainian statesman and socio-political figure. He also developed the concept of Ukrainian activity. He believed that Ukraine should be a Cossack autonomy within the Polish-Lithuanian Commonwealth. And he developed a constitutional project of the Ukrainian Cossack state, which defined the authorities and government, military-political organization, legal system. This project was submitted to the Polish government but was soon rejected.¹⁰

In the middle of the XVI century (1552–1554) hetman D. Vyshnevetsky founded the Zaporozhian Sich, which became the center of the Ukrainian national liberation movement. Zaporozhian Sich a regiment-hundred administrative system. The supreme power was in the hands of the Cossack Council, which was elected by the hetman. Within the Polish-Lithuanian Commonwealth, the Cossacks created their own republic, with their own independent army and special jurisdiction, and began the struggle for independence.

Constitutional ideas in the Cossack state were developed by Cossack leader Severin Nalyvaiko (first half of the 1560s – 1597), Polish and Ukrainian poet Simon Pekard (1567–1601), church publicists of the second half of the XIX century I. Boretsky, Z. Kopystensky, M. Smotrytsky, P. Mohyla.

Ukrainian political, ecclesiastical and educational figure P. Mohyla (1596–1647) was the first to describe the conditions for the formation of the Ukrainian state, namely the understanding and harmony of all segments of the population and monarchical power, severely limited by law. He believed that law is the greatest social value, higher than any power, both royal and ecclesiastical. His activity became the basis of the state-building policy of B. Khmelnytsky.¹¹

Thus, in the XVI century, the Polish-Lithuanian Commonwealth was a country with fairly progressive, at that time, democratic principles, which lasted more than 200 years, then declined and was liquidated by the Third Partition of the Commonwealth in 1895 due to the fact that the leading sections of the population could not agree among themselves on the division of power, which is impossible in the process of democracy. In 100 years, for the same reason, the Russian Empire will be destroyed.

⁹ Vyrskyi D. Stanislav Orikhovsky-Roksolan as a historian and political thinker. Kremenchuk: Vyd-vo KDPU, 2001. 217 p.

¹⁰ Tkachev S., Khanas V. Vereshchinsky Joseph. Ternopil encyclopedic dictionary. Ternopil: «Zbruch», 2004. P.248.

¹¹ The phenomenon of Peter Mohyla: biography, activity, position. Kyiv: Dnipro, 1996. 267 p.

«By the middle of the XVII century, the political, social, and national conditions for the formation of the Ukrainian state had finally matured. This is evidenced by the national liberation war of the Ukrainian people, which was anti-feudal and had several common features with the European bourgeois revolutions. By this time, the Ukrainian national elite had already gained some constitutional experience. Together, this created opportunities for the emergence of domestic constitutionalism as a legal phenomenon».¹²

The process of formation of Ukrainian constitutionalism took place during the time of Hetman B. Khmelnytsky, after in 1648 the Ukrainian independent state – Hetmanate – was created. It had a General Council, headed by the hetman and holding in his hands all three branches of government. Hetman issued universals (legislative), managed the General Council (executive), and decided court cases (judicial). The «Charter on the structure of the Zaporozhian army» was issued, which became a valid Ukrainian legal act. Judicial proceedings were conducted under customary law.

As it is known, the history of the Hetmanate was quite complicated, neighboring countries did not want to put up with the independence of Ukraine. Therefore, in 1654 between Ukraine and Muscovy was concluded Pereyaslav agreement, according to which Ukraine became an autonomous part of the Russian state. At first, it was this way, but over time, over the following centuries, the Russian government began to interfere more and more in Ukraine's affairs. Ukrainian hetmans resisted, tried to restore the Ukrainian independent state.

Thus, in 1710 Hetman Philip Orlyk drafted the «Constitutional Rights and Freedoms of the Ukrainian Army», which were based on very democratic principles. The main leitmotif of this document was that it consolidated the historical foundations of Ukrainian statehood, which dates back to the times of Kievan Rus. P. Orlyk's Constitution established the national sovereignty of Ukraine, the rule of law, defined the borders of Ukraine, the principles of domestic and foreign policy, divided power into three independent branches – legislative (General Council), executive (Hetman and his government) and judicial (General Court) and established social security for the poor. «Ukraine on both sides of the Dnieper must be forever free from foreign rule».¹³

This Ukrainian Cossack constitution, at that time, was one of the most democratic in Europe and the world. It established the democratic system, the parliamentary-presidential republic, and the government in Ukraine and embodied the ideal of the political aspirations of the Ukrainian people. P. Orlyk's Constitution did not become a valid document but embodied all the results of the development of Ukrainian constitutionalism and legal thought of the Ukrainian people of the XVIII century.¹⁴

«From the very beginning of the formed union, it became obvious that between the Ukrainian and Russian peoples in the approaches to the implementation of the system of state power there were significant ideological differences caused by different worldviews, different perceptions of democratic

¹² Kozachenko A.I. History of the development of constitutionalism in Ukraine. Poltava, 2020. P. 34.

¹³ Honcharenko V.D. History of the constitutional legislation of Ukraine. Kharkiv: Pravo, 2007. P. 15.

¹⁴ Yavornytskyi D.I. History of the Zaporozhian Cossacks: in 3 vols. Vol. 1. Kyiv: Science. opinion, 1990. 596 p.

principles of a state organization. This created the preconditions for the fact that in the second half of the XVIII century the process of state and legal subjugation of Ukraine actually began, which turned it from an equal ally, an independent political unit into one of the Russian provinces». ¹⁵

IV. CONCLUSIONS

Throughout the XVIII century, the Ukrainian people made every effort to maintain their statehood and the development of constitutional and legal thought in Ukraine, despite the total oppression of the rights of the Ukrainian people by the Russian authorities. The Kyiv-Mohyla Academy became the main center for the development of socio-political and constitutional ideas in Ukraine. Therefore, the philosophical and constitutional teachings of the time were closely linked to theology. The history of Ukraine is known for the works of such prominent Ukrainian philosophers and thinkers as S. Yavorsky, F. Prokopovych, Ya. Kozelsky, H. Skovoroda. In their works, the ideas of constitutionalism, natural law, and social contract known at that time were developed and spread. In this way, they tried to apply these ideas to the life and socio-political conditions of Ukraine. ¹⁶

In 1764, by order of Empress Catherine II, the Hetmanate was abolished, in 1775 the Zaporozhian Sich was destroyed, and in 1781 the entire administrative-territorial system was abolished. Ukraine lost its state again. It was turned into an ordinary province of the Russian Empire. And only Galicia, Northern Bukovina, and Transcarpathia remained part of the Austrian Empire. 90% of Ukrainian territories became part of a country with an absolute monarchy for the first time. The king controlled all three branches of government. The legislature was the senate, which drafted laws, which were then approved by the emperor. Executive power was concentrated in the hands of ministries, which strengthened the centralization of the state apparatus. Ministers were appointed by the emperor and reported directly to him.

And in Europe from the end of the XVIII century the first constitutions of the modern type began to appear: in Poland (May 3, 1791) – the first in Europe and the second in the world after the USA, in France (September 3, 1791). This could not but affect the ideology of the Russian Empire. But the social and legal system of this country, in comparison with the countries of Western Europe, was very underdeveloped. Thus, the legal system of Ukraine has embarked on the path of counter-reforms and slowing down development.

As it is known, during the period under study, Ukraine failed to retain power and resist aggressive neighbors. But, although for several years, an independent state was created, an important step was taken on the path to the cherished dream and the development of Ukrainian constitutionalism. Many prominent Ukrainians – scientists, politicians, public figures – worked on this. And in the internal socio-political life of Ukraine, there were some irreversible changes,

¹⁵ Turchyn Ya.B. Otto Eichelman: a figure at the turn of the century. Political science discourse. Lviv, 2010. 520 p.

¹⁶ Demydenko H.H. History of the doctrines of state and law: a course of lectures. Kharkiv: Pravo, 2012. 432 p.

which already in the XIX century turned Ukrainians into a modern political nation.

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