

ПРАВА ТА СВОБОДИ ОСОБИ ТА ГРОМАДЯНИНА В КОНСТИТУЦІЯХ ФРАНКОМОВНИХ ДЕРЖАВ АФРИКИ

Анотація. Конституційні права та свободи є фундаментальною основою існування та розвитку народу, а тому держава зобов'язана створювати ефективні організаційно-правові механізми для їх реалізації. У статті проведено порівняльний аналіз конституцій франкомовних держав африканського континенту, які були введені в дію відразу ж після отримання ними незалежності у 1950-1960-ті роки, та оновлених Основних законів наприкінці ХХ – початку ХХІ століть. Авторами було встановлено, що перші конституції у викладі прав і свобод осіб та громадян обмежувались, в основному, найважливішими міжнародними деклараціями про них та розділами про суверенітет держави. Їх зміст орієнтувався у першу чергу на визначення організації державного механізму, його найважливіших ланок та стрижневі поняття держави й суверенітету, що обумовлювалось безпосереднім звільненням від колоніальної залежності, поспішністю у державотворенні й відсутності відповідного досвіду. Нові ж Основні закони без будь-якого винятку вирішують питання щодо прав і свобод людини у багатоаспектному обсязі. Вони забезпечують більшу роль держави в економічній сфері, визнають пріоритет людини у її взаємовідносинах з державою, містять широкий перелік прав і свобод осіб і громадян, розподіляють їх на громадянські, політичні, соціально-економічні, культурні, встановлюють гарантії їх реалізації та механізми захисту, регулюють відносини між суспільством та державою, не допускають зрощення державних і партійних інститутів, узурпації будь-якою політичною партією державної влади, вводять положення про соціальну державу, про зовнішньополітичну діяльність держави та про співвідношення національного і міжнародного права. Такі зміни обумовлювались нагальними потребами вирішення гострих проблем внутрішньополітичного характеру та впливами процесу глобалізації. Вони свідчать про значний розвиток конституцій африканських франкомовних держав у напрямку до визначальних правових цінностей сучасності.

Ключові слова: франкомовні держави, конституції, африканський континент, права людини і громадянина, свободи людини і громадянина.

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RIGHTS AND FREEDOMS OF PERSONS AND CITIZENS IN CONSTITUTIONS OF FRENCH-SPEAKING COUNTRIES OF AFRICA

Abstract. Constitutional rights and freedoms are fundament of people's existence and development, that is why a state is obliged to create efficient organisational and law-based mechanisms

to their implementation. The article provides a comparative analysis of the constitutions of the French-speaking states of the African continent, which were put into effect immediately after states had gained independence in 1950-1960-s, and updated Major Laws in the late XX – early XXI centuries. The authors have come to the conclusion that the first constitutions in the presentation of the rights and freedoms of individuals and citizens were limited, mainly, to the most important international declarations about them and sections on the sovereignty of the state. Their content was focused primarily on the definition of the organisation of the state mechanism, its most important links and the core concepts of state and sovereignty, which was conditioned by the liberation from colonial oppression, the haste in state creation and lack of relevant experience. The new Basic Laws solve without exceptions issues regarding rights and freedoms of citizens and persons in many aspects. They provide a greater role for the state in the economic sphere, recognise the priority of the person in relations with the state, contain a wide list of rights and freedoms of individuals and citizens, divide them into civil, political, socio-economic, cultural, establish guarantees of their implementation and mechanisms of protection, regulate relations between society and the state, do not allow the merging of state and party institutions, usurpation by any political party of state power, introduce provisions on the social state, on foreign policy state and the ratio of national and international law. Such changes were conditioned by the urgent needs of solving the acute problems of the domestic political nature and the impact of the globalisation process. They demonstrate the significant development of the constitutions of the African French-speaking States towards the determinative law-based values of modern time.

Keywords: french-speaking states, constitutions, African continent, human and civil rights, human and civil freedoms

INTRODUCTION

Formation of structure and content of first African states constitutions has been influenced by numerous factors, in particular, English, Romano-Germanic, customary, religious law, national traditions, everyday arrangement, etc.; and the Basic Laws of the late XX – early XXI centuries have been influenced by changes that have affected political, social and cultural development, and the challenges of the globalization process. Today, there are 48 states on the continent, 15 constitutions of which are declared in the official English language, 12 in French, 9 in Arabic, 4 in Portuguese, 1 in Amharic, 8 in two languages (11 languages in the Republic of South Africa, most of which are English and Afrikaans). Therefore, the most numerous were the countries (31 out of 48) with the national European languages, namely, English, French and Portuguese, under the influence of which the general and Romano-Germanic law has formed on the African continent. The constitution of Arab-speaking states was formed under the influence of European secular and Arab religious law. The large number of states and the limited length of the article compel its authors to dwell only on the consideration of the rights and freedoms set forth in the constitutions of the French-speaking countries, which, in the opinion of V.M. Shapovalov, “are recognised at the modern stage of development of theory and practice of constitutionalism by fundamental entities of constitutional regulation” [1]. The relevance of the issue

is exactly in acuteness of this issue and lack of researching trends in its evolution. The novelty of the study is determination of features of presentation of the rights and freedoms of individuals and citizens of African French-speaking states by their first and updated constitutions, as well as the differences between them, the signs of which are the benchmarks for the development of modern practices of constitutionalism. The article is of value for comparatists, international lawyers, human rights activists, African country researchers, lecturers in comparative jurisprudence and constitutional law, students.

1. MATERIALS AND METHODS

With the objective to determine features of presentation of the rights and freedoms of individuals and citizens of African French-speaking states, the authors used different theoretical methods and techniques of research. First of all, first and updated constitutions of the states have been analysed on the basis of regulatory and structural and complex approaches. This has determined peculiar to them basic features of presentation of various human rights and freedoms, as well as commonality and differences. The main method was comparative analysis of the research object that is the core of achieving the purpose. It was his application that provided the establishment of common features and differences as inherent in each separate Basic Law, and each of their two groups.

The method of analysis has determined that the French Republic for the first time used the method of written constitutions, which not only determined functions of bodies of new state, but also proclaimed and constitutionally consolidated a list of fundamental rights. Since then, this method has been used almost by all states of the world. The list of international rights is much broader than in the constitutions of those states, which had been adopted long before the emergence of international human rights law. International law could not fail to take into account experience of socialistic countries or welfare states and, consequently, it proclaims also social and economic rights not known to American constitutionalism. Institute of Human Rights of Ukrainian constitutionalism, which on the one hand, could not but be influenced by socialist ideas, on the other hand, by international human rights standards, also includes a wide range of social and economic rights.

Systematic method, according to which requirements the issues of the study has been formulated, contributed to reviewing constitutions as homogenous units. Principles of retrospective analysis, history and determinism provided determination of the reasons for the unequal presentation of the rights and freedoms of citizens by the first and updated constitutions, and the striving for objectivity in the presentation of the material conditioned their impartial consideration. The principle of analogy turned out to be very important. Its essence is to determine among ten old and ten updated constitutions of the prime example of representation of the issues studied in the article and to add rele-

vant one to each one of them. It is this principle that ensures the optimal length of the article at the expense of nineteen sources and merging them into two groups based on the identification of their defining characteristics.

2. RESULTS AND DISCUSSION

2.1. Rights and freedoms of persons and citizens in post-colonial constitutions

In first Basic laws of French-speaking states, representations of rights and freedoms of persons and citizens differed markedly. Only three of ten contained individual sections devoted to this issue, in addition two – Guinean and Togo – in the text “On fundamental rights and freedoms of citizens”, “On Civil Liberties and Human Personality”, and one – Congo (Léopoldville, since 1966 – Kinshasa) – in the form of an annex – “Basic Law on Civil Liberties” [2-4]. The Constitution of the Republic of Guinea gave the right to elect and to be elected to all citizens, without distinction in race, sex or religion for compliance with the statutory conditions, as well as to use freedom of speech, press, assembly, association, demonstrations, freedom of conscience within the framework of laws. It guaranteed habeas corpus, inviolability of the home, privacy of correspondence, equal rights of citizens to labour, rest, social security and education, freedom of trade unions and strikes. It provided the punishment for any act of racial discrimination or racist or regionalist propaganda, as well as asylum for foreigners in the event of persecution for political activities, as well as in the field of science and culture. Citizens undertook to defend their Motherland, adhere to the Constitution and other laws of the republic, pay taxes and fulfill their public duties [2].

The Basic Law of the Togolese Republic declared the human personality sacred, and the duty of the state was its defence and protection, all citizens were equal in rights, regardless of sex, origin, race, language, beliefs and convictions, it recognised and guaranteed the inviolability and integrity of rights man as an individual, as well as within the framework of public associations in which his personality manifests itself. Everyone had the right to free development of a personality provided that he or she respected the rights of others and complied with the public order and to apply the principles of habeas corpus [3]. Inviolability of the home, privacy of correspondence, telephone conversations, postal and telegraphic departures, freedom of movement, choice of place of residence, right of ownership, freedom of expression in oral and written form, subject to observance of laws, freedom of association, protection of marriage and family, freedom of conscience and religion. The state was obliged to assist parents in the upbringing of their children, protect young people from exploitation, and ensure the right to education [3]. The right to work and protection of the citizen from the restriction of his origin, religion or belief, the right to a fair remuneration for work, which ensures the dignity of a person and his family, was proclaimed. The responsibilities include the protection of the Motherland, the integrity of its territory, payment of taxes and participation in public expenditures [3].

The Basic Law of the Republic of the Congo (Léopoldville) was somewhat different from the previous provisions on the rights of citizens, both in their scope and in a noticeable detailing of the provisions. Thus, article 1 claimed that the law is the expression of the indisputable commitment of the people of the country to human rights and democracy. He is inspired by his primordial care of ensuring respect for the human personality regardless of race, colour, sex, language, religion, nationality, political or other beliefs, social origin, property status, birth or any other status. It seeks to determine the rights that certain individuals enjoy in Congo and to provide their enforcement or contribution to enforcement by authorities [4]. Apparently, such a paper arose because of the absence of the Preamble in the Congolese Constitution (Léopoldville), in contrast to the nine other major laws of the French-speaking states, which set out the stated principles.

All citizens of Congo were proclaimed free and equal in their dignity and rights [4]. Article 3 in paragraphs 1-4 of sub-paragraphs a-b taught the principles of habeas corpus [4]. Art. 4 saw the essence of the right to freedom in the fact that nobody can be held in slavery or bonded dependence, forced to work, with the exception of those in prison. Art. 5, five paragraphs and five subparagraphs in details, laid the terms of deprivation of liberty [4]. In the same way Art. 6, 7, and 8 explained the rights of a person in the case of a fair trial and prosecution against her [4]. Further inviolability of the home, the secret of correspondence, telephone and telegraph communications, the right to marry and to create a family of elderly citizens, freedom of thought, conscience, religion, protection from religious education, the right to education, inviolability of property, participation in peaceful gatherings and associations were guaranteed [4]. The state was obliged to strive to provide every citizen with the right to work, free choice of work, protection against unemployment, decent working conditions, able to provide a decent person the existence of the family. In cases of war or serious disorders that threaten the internal security of the state, the government and the provincial authorities were given the right to violate the provisions [4].

The last seven constitutions proclaimed the basic principles of the rights and freedoms of individuals and citizens in the Preamble and partly in other sections: the Ivory Coast, Dagomey, Congo (Brazzaville), Niger, Togo, Mali did in the Preamble and Chapters on State and Sovereignty [3; 5-9]; Gabon did in the Preamble and in the “Preliminary chapter” [10]; the Central African Republic did in the Preamble, the chapter “On the foundations of society” and the section “On state and sovereignty” [11]. Thus, the Preamble of the Constitution of the Ivory Coast Republic declared that its people, “claims its commitment to the principles of Democracy and Human Rights as defined by the Declaration of Human Rights and Citizenship in 1789, the Universal Declaration of Human Rights of 1948. It expresses his desire to cooperate in peace and friendship with all peoples who share his ideals of Justice, Freedom, Equality, Brotherhood and Solidarity between people” [5]. Chapter 1 “On State and Sovereignty” said, in particular, about the right to vote of all citizens, political rights, equality of all before the law

regardless of origin, race, gender, religion, membership in political parties [5]. Similar provisions were inherent in other Preambles and Chapters, although they differed somewhat in scope. “The content of the old constitutions emphasised the domestic legal scholar V.M. Shapoval, was oriented primarily on the definition of the state mechanism organisation and its most important links ... The concepts of state and sovereignty are core for the theory and practice of constitutionalism... the determinant and the inherent quality of the power in within the limits of its territory and its independence in relations with other states” [1]. According to his statements, preambles of many constitutions of countries that develop refer to international treaties and other acts of universal and regional character, in particular, Charters of the UN and the Organization of African Unity, the Universal Declaration of Human Rights, etc. That is why the provisions of the preamble are of normative character [1]. The researcher added that REFERENCES in Preamble of the Constitution of France to the Declaration of Human Rights of 1789, “looks like a peculiar compensation of absence in its structure of sections or even articles devoted to rights and freedoms”, that affected Basic Laws of some French-speaking states of Tropical Africa [1].

2.2. Updated constitutions on rights and freedoms of persons and citizens

All new constitutions without exceptions contain preambles, chapters on rights and freedoms of persons and citizens and on state sovereignty. “In the process of state and legal development of countries of the world, as V.M. Shapovalov explains this phenomenon, there is the tendency to complicate the structure of Basic laws; this fact indirectly proves the expansion of the sphere of constitutional regulation” [1]. In this, the Basic Law of the Congo (Kinshasa) differs by the peculiar structure. The “rationale of the bill” opens it, which states that, since independence, on June 30, 1960, the Republic of the Congo was undergoing periodic political crises due to the failure of certain powers to recognise the legitimacy of the Constitution, and from 1996 to 2003 – a series of wars to achieve development opportunities countries. On December 17, 2002, in Pretoria, in the process of the Inter-Congolese Dialogue, the Global and Inclusive Agreement has been conducted, which implied the adoption of a new democratic Constitution [12]. It is worth mentioning that the dual representation of the section “On State and Sovereignty”, which is not found in other basic laws of the French-speaking countries of Africa. In the first case, paragraph 1 “On State and Sovereignty” put forward the purpose of strengthening the disturbed by the continuous wars of national unity, on the one hand, and the creation of a centre for stimulation and development from below, on the other hand. The principle of pluralism is consolidated, its guaranteeing by the Constitution that sees the treason in the creation of a single party institution. Chapter 2 “On nationalities” guarantees support for the principle of exclusivity of Congolese nationality – citizenship, acquisition and loss of which are determined by the organic law [12]. Paragraph 2 “On human rights, fundamental freedoms, responsibilities of citizens and the state”, affirms

commitment of the Democratic Republic of the Congo to human rights and fundamental freedoms as proclaimed by international legal documents to which it has acceded and which it incorporated into the text of the Constitution. In this part, in line with the requirements of the times, the Constitution provides a “solid innovation” in the form of “man-woman” [12]. Paragraph 3 “On the organisation and implementation of power” formulates “the main concerns and care” that should dominate in the organisation of these institutions, namely, ensuring the harmonious functioning of state institutions, conflict prevention, introduction of a rule of law, resistance to any attempt of dictatorial management, guaranteeing good governance, fight against injustice, and ensuring democratic alternation. Also, Methods are provided to achieve such a purpose. Paragraph 4 “On revision of the Constitution” emphasises the inability to review the above provisions [12].

Preamble follows all this, which states that “injustice and its consequences, lawlessness, regionalism, tribalism, clan system and old-boy network in their numerous manifestations is in the foundation of the general shift of values and the decline of the country” [12]. The decisiveness to maintain and strengthen independence and national unity, while respecting the diversity and the positive features of the people is reaffirmed. Again the affiliation and commitment to the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, the United Nations Convention on the rights of the child and the rights of women, international instruments for the protection of human rights, as well as respect for the mutual identity, the principles of the sovereignty and territorial integrity of each state is confirmed. Again the inalienable and integrated right of the people to organise and develop political, economic, social and cultural life in accordance with the national spirit is strengthened [12]. The repetition of the provision “On state and sovereignty”, states the affiliation of people, its implementation in referendums by aggregate, equal and secret vote. The Republic of the Congo is called “law-based, independent, sovereign, unite, indivisible, social, democratic and secular state”. The official language is French and national are Kikongo, Lingala, Swahili and Chimba, development of which the state provides without any discrimination as well as support and protect other languages of the country. Also, the principle of decentralisation and conferment of legal personality to territorial entities are emphasised [12].

Repeated text about rights and freedoms is divided into four chapters: Chapter 1. “On civil and political rights” (p.11-33); Chapter 2. “On economic, social and cultural rights” (p.34-49); Chapter 3. “On collective rights” (p.50-61); Chapter 4 “On civil obligations” (p.62-67) [12]. Civil and political rights are that all people of the country are born free and equal in rights and dignity provided that political rights can be used only by the Congolese, with the exception of cases established by law. All Congolese are equal before the law and have the right to equal defence. During education, public service or any other activities, any Congolese cannot be discriminated on the basis of religion, origin, family, social conditions, place of residence, opinions or political beliefs,

belonging to a certain race, ethnicity, religion or belief, to cultural or linguistic minorities. Government bodies in every way protect the rights of women [12].

A human is proclaimed sacred, protected by the state, has the right to live, physical security, free development subject to compliance with the law. Nobody can be subjected to cruel, inhuman degrading treatment, to be held in slavery, to be forced to labour. The principles of habeas corpus and the right to protection are guaranteed. Everyone has the right to freedom of thought and expression, conscience, religion, conviction, demonstrations and petitions, privacy and free movement [12].

Economic, social and cultural rights are sacredness of private property, the guarantee of private entrepreneurship, protection from unemployment, fair wages, freedom of association in an organization, entry into trade unions, the creation of a family, the protection of minors, the right to education, to cultural life, health care, food security, the protection of the elderly, decent housing, access to drinking water and electricity. The order of implementation of such rights is determined by the organic law [4]. Collective rights include providing and implementing peaceful and harmonious coexistence of all ethnic groups of the country, the unpolluted environment [12].

Civic duties cover the necessity to know laws, protect the Motherland, respect other Congolese, to preserve property, possessions and protect the interests of the state and other citizens [12]. In fact, the first Basic law of Congo (Kinshasa) of 1960, at that time Congo (Léopoldville), also differs with its noticeable peculiarity of the structure. Firstly, he was not referred to as the Constitution, as in all the other French-speaking countries, but the “Basic Law on the Congo’s structure”; secondly, it was part of the three acts that had provisions on the rights and freedoms of citizens, and, thirdly, the Law carried it beyond the text as a separate law-application entitled “Basic Law on Civil Liberties” [4; 13].

There are certain differences in other constitutions too. Foremost, they all set out, to a greater or lesser extent, the rights and freedoms in the preambles and sections on the state and sovereignty, as well as in sections devoted to this issue. Names of chapters are also different, in particular, “Fundamental freedoms, rights and obligations” in the Constitution of Guinea [14]; “Fundamental foundations of society” in the Basic Law of the Central African Republic [15]; “Fundamental Principles and Rights” – the Constitution of Gabon [16]; “Human dignity. Rights and Obligations Related to It” – the Constitution of Mali [17]; “On Rights and Duties” – the Constitution of Benin [18]; “Freedom, Rights and Duties” – the Constitution of Cote d’Ivoire [19]; “On the Rights and Duties of Man” – the Constitution of Niger [20]; “On Civil Rights, Freedoms and Duties” – the Constitution of Togo [21]. The constitutions are distinguished by the number of articles devoted to the rights and freedoms: Congo (Kinshasa) – 57 [12]; Togo – 41 [21]; Benin – 32 [18]; Niger – 25 [19]; Mali – 24 [17]; Guinea – 19 [14]; Central African Republic – 17 [15]; Cote d’Ivoire – 6 [21] and Gabon – 1 [16]. However, with greater diversity or noticeable conciseness, the constitutions of the French-speaking states declare fundamental rights and freedoms in combination with the most

important principles of international instruments with the peculiarities of national traditions and other influences.

CONCLUSION

Therefore, comparative analysis of texts of first constitutions of African French-speaking states makes it possible to state that representing in the presentation of the rights and freedoms of individuals and citizens, constitutions were limited, mainly, to the most important international declarations about them and sections on the sovereignty of the state. Their content was focused primarily on the definition of the organisation of the state mechanism, its most important links and the core concepts of state and sovereignty, which was conditioned by the direct liberation from colonial oppression, the revolutionary haste in legal registration of the newly acquired independence and the lack of necessary experience of state-building. Adopted in four-five decades new Basic Laws solve without exceptions issues regarding rights and freedoms of citizens and persons in many aspects, approaching to relevant standard of European constitutions. They ensure the big role of the state in economic sphere, recognise priority of a human in relations with the state, contain a big list of rights and freedoms of persons and citizens, divide them into civil, political, socio-economic, cultural, establish guarantees of their implementation and mechanisms of protection, regulate relations between society and the state. The updated constitutions do not allow the merging of state and party institutions, prevent the usurpation of any political party of state power, introduce provisions on the social state, the foreign policy activities of the state and the relationship of national and international law. Such changes demonstrate significant development of constitutions of African French-speaking states towards determinative law-based values of modern time. Such evolution has been conditioned for decades by the urgent needs of resolving the acute issues of the internal political nature, in particular, the cessation of civil wars, armed interethnic and interconfessional clashes, mass disturbances through the impoverishment of the population, the prevention of coups, dictatorial regimes with continuous military and extraordinary states, the avoidance of nepotism, corruption, etc., and on the other side, effective impacts of the globalisation process.

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Suggested Citation: Zinchenko, O.V. (2019). Rights and freedoms of persons and citizens in constitutions of french-speaking countries of Africa. *Journal of the National Academy of Legal Sciences of Ukraine*, 26(2), 98–108.

Submitted: 12/01/2019

Revised: 18/05/2019

Accepted: 13/06/2019