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FEATURES OF THE IMPLEMENTATION OF THE CONSTITUTIONAL PRINCIPLE OF EQUALITY

Abstract: In the article, the author reveals the constitutional provision on the equality of all before the law and the court. At the same time, the author notes that the constitutional principle of equality is considered by him as a constitutional criterion for evaluating the legislative regulation of any rights and freedoms, and the applicability of this principle to all fundamental rights and freedoms does not exclude the possibility of its various manifestations. In addition, it is noted that the analysis of the implementation of the principle of equality of all people before the law convincingly proves that it can be considered as one of the most important principles of legal statehood.

Key words: the constitutional provision on the equality of all before the law and the court, the constitutional principles of equality, the concept and essence of the category of constitutional foundations, constitutional and legal regulation, the social and legal regime of the constitutional category of equality.

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Introduction

The constitutional provision on equality of all before the law and the court is one of the fundamental principles of the rule of law, which, in turn, brings its normative content closer to the requirement of the Constitution as one of the foundations of the constitutional system, providing for equality of the rights, freedoms and duties fixed in its text for every citizen, where every citizen has all rights and freedoms on its territory and bears equal duties provided for by the Constitution.

This provision fully complies with international legal norms, including article 7 of the Universal Declaration of Human Rights of 1948, article 7 of the International Covenant on Economic, Social and Cultural Rights of 1966, article 14 and part 2 of Article 20 of the International Covenant on Civil and Political Rights of 1966, article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Modern researchers indicate that the category of equality is a valuable constitutional and legal value that can be considered both in a horizontal cross-section (an

equal measure of freedom for all spheres of social life) and in a vertical one (depending on the level of the social and legal status of an individual – from the family to the national level [1]).

This determines the presence of the category of equality both structural characteristics (related to the peculiarities of the socio-political and economic structure of society) and individual and personal indicators of equality, which are formed at the level of the individual status of a certain person (who initially realizes equal opportunities for all).

The Constitution, when establishing the principle of equality, does not stop only at recognizing the equality of the scope of rights and freedoms (formal legal equality), but also establishes the state's obligation to ensure rights and freedoms regardless of any circumstances.

In fact, the state is obliged to create equal guarantees of rights and freedoms, which is implemented through an active purposeful organizational process (based on a system of special measures of a legal, political, economic, ideological and organizational nature) to create such conditions in

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which everyone has a real opportunity not only to use the recognized right or freedom, but also to protect them if necessary, including with the help of justice.

According to the Constitution, the state is the obligated subject in this case, meanwhile, this circumstance does not exclude the obligation to ensure equality on the part of non-state actors. For example, in the process of forming corporate norms, business entities are obliged to take into account the constitutional principle of equality.

At the same time, as it follows from the Constitution, the socio-legal regime of the constitutional category of equality manifests itself, among other things, on the basis of the active use of special means of legal differentiation and legal incentives - this may be the establishment of special quotas for the representation of a disadvantaged (weak) social group in a particular area or obvious advantages for some categories based solely on objectified characteristics, such as gender or ethnic (racial) affiliation.

The logic of positive discrimination implies the adoption of measures aimed not at ensuring equal conditions for representatives of all groups, but at forcing the provision of advantages (benefits, quotas, etc.) for members of a weaker (vulnerable) group, aimed at ensuring equal opportunities and reducing the difficulties faced by representatives of these groups when participating in public life.

International law in a number of documents establishes the possibility of taking measures that fall under the signs of positive discrimination, under certain conditions. In particular, the Standard Rules for Ensuring Equal Opportunities for Persons with Disabilities, adopted by the UN General Assembly on December 20, 1993, establish in rule 15 "Legislation "(among other things) that "legislative measures may be necessary to eliminate factors that may have a negative impact on the lives of persons with disabilities, including infringement of the dignity of the individual and the vulnerability of persons with disabilities to become victims of violations of their rights. The possibility of adopting provisions on positive discrimination may be considered" [2].

Another example where international law explicitly allows measures of positive discrimination is the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, Article 4 of which provides for the adoption, if necessary, of special measures to protect persons belonging to the relevant peoples, their institutions, property, labor, culture and the environment; such special measures do not prejudice the non-discriminatory use of general civil rights [3].

This idea understands equality not only as a formal equalization of rights, but also as actual equality. The requirement of equality before the law and the court is of a comprehensive nature, it applies to the entire system of rights and freedoms. This implies

such connections and relations of the individual with the state and society that exclude any dependence of his position on the natural and social characteristics of the individual specified in this norm, as well as on any other circumstances.

Developing this thesis, it should be pointed out that the constitutional principle of equality is considered by him as a constitutional criterion for evaluating the legislative regulation of any rights and freedoms, and the applicability of this principle to all fundamental rights and freedoms does not exclude the possibility of its various manifestations: in relation to personal rights, it means mainly formal equality, in relation to economic and social rights, formal equality can turn into material inequality. Thus, based on the constitutional freedom of contract, the legislator does not have the right to limit himself to the formal recognition of the legal equality of the parties and must provide certain advantages to an economically weak and dependent party in order to prevent unfair competition in the field of banking activities and really guarantee compliance with the principle of equality in the implementation of entrepreneurial and other economic activities not prohibited by law.

Meanwhile, it seems necessary to focus on understanding the constitutional and legal nature of the principle of equality before the law and the court.

The peculiarity of the constitutional principle of equality before the law and the court is that, on the one hand, it is relatively independent (which is confirmed by its regulation in a separate part of the constitutional norm), but at the same time, it is an integral element of a more voluminous constitutional principle of equality; and, on the other hand, the principle under study itself can be divided into two relatively independent ones: the principle of equality before the law and the principle of equality before the court, therefore it seems logical to consider each of them sequentially. Etymologically, the term "law" means "the limit imposed on the freedom of will and action" [4].

In the legal sense, the law is understood as "a normative legal act having the highest legal force, adopted in a strictly defined, special order, establishing the basic norms of all branches of law and regulating the most important social relations" [5].

However, in the question of understanding the constitutional principle of equality before the law in the context of the meaning put by the legislator in the concept of "law", there is no unity of points of view. Thus, G. N. Komkova points out that "it is possible to talk about the equality of different people not before different normative acts (decrees, resolutions, decisions), but only before the law" [6]. O. I. Kulenko shows solidarity with this approach: "equality is assumed not before any normative legal acts, but only before those that were adopted by the legislative authorities" [7].

It should be noted that for the effective implementation of the principle of equality of all before

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the law, the qualitative characteristics of the law itself as a normative legal act are essential. Thus, it is noted that this constitutional principle implies the need for a legal norm to meet the requirements of certainty, clarity and unambiguity, since "equality can be ensured only if all law enforcement officers understand and interpret the norm uniformly" [8].

And, on the contrary, the uncertainty of the content of a legal norm allows for the possibility of its extensive spontaneous interpretation in the process of law enforcement and can lead to arbitrariness, and therefore to a violation of the principle of equality.

The analysis of the implementation of the principle of equality of all people before the law convincingly proves that it can be considered as one of the most important principles of legal statehood. At the same time, its full, literal implementation in legal reality is impossible due to the fact that in developed democratic states, in order to protect constitutional and legal values, inequality of individual citizens before the law is legally allowed. It manifests itself in a special procedure for bringing to justice the President, deputies of representative authorities, judges, etc. This inequality before the law, the so-called "legal immunity", in fact, is a privilege that ensures the legal security and independence of these officials [9].

Thus, legal immunities as exceptions to the general rules are provided for either by the Constitution itself, have a public-legal character and serve public interests, are guarantees of the implementation of socially useful state functions, professional activities in the interests of all members of society [10], and therefore are the compromise measure, the establishment of which is necessary for the normal functioning of society and the state.

The immunity granted to judges, deputies of representative bodies of power, the President, and some other categories of State officials is certainly a certain exception to the constitutional principle of equality of all before the law and the court. However, such inequality allowed by the Constitution before the law is necessary from the point of view of protecting other constitutional and legal values [11].

The granting of immunities is due to the fact that the company, making increased demands on these persons and their professional activities, is obliged to provide them with additional legal remedies for the effective performance of the tasks assigned to them, and to ensure the legal security and independence of these officials [12].

The legal immunities of these persons are of a public-legal nature, which distinguishes them from personal privileges and are designed to serve the public interests.

Thus, at present, in the modern state, formal equality and equal rights of all citizens are proclaimed. However, it should be noted that formal legal equality exists at the level of the general (constitutional) status of the individual, which is formed mainly by general

norms. In addition to the general status, there are many special (generic) legal statuses that reflect the legal status of certain categories of citizens (pensioners, military personnel, officials, etc.).

Special statuses differ among themselves in terms of the scope of rights and obligations that make up their content. In addition, the hierarchy of legal norms forms a hierarchy of special statuses. It follows from this that a lot of special legal statuses, their hierarchy indicates the impossibility of the existence of actual equality in a modern state, despite the fact that formal equality exists and is fixed at the level of the general status of a person and a citizen.

Meanwhile, the analysis of the historical experience of the formation of the principle of equality before the court allows us to conclude that the principles of the organization and activity of the judiciary, which in European countries received the right to exist as a result of revolutions, were proclaimed at the initiative of the government and for the first time were legislatively fixed not at the constitutional level, but by the judicial charters of 1864 – legislative acts that reformed the judicial system and judicial proceedings.

Summing up the consideration of the constitutional and legal nature of the principle of equality before the law and the court, it is possible to draw the following conclusions.

The constitutional principle of equality before the law and the court is derived from the constitutional and legal category of equality and is a fundamental idea expressed in the state-power decree, clothed in the normative and legal shell of the Constitution, which is based on the position of the legislator on the need to ensure equality of all before the law and the court in the state and society.

The establishment of the constitutional and legal foundations of equality before the law and the court consists in mediating legal relations between the foundations of the constitutional system and the organization and activities of public administration bodies to establish, ensure the implementation, protection and protection of the principle of equality before the law and the court.

Being a general constitutional principle, the principle of equality before the law and the court is one of the main legal guidelines of the state as a modern democratic state and at the same time has a complex triune essence characterized by a combination of constitutional-value, status and human rights elements.

Being based on the specific concepts of equality – equality before the law and equality before the court, this principle applies only to public relations arising between persons, i.e. subjects of public relations regulated by this principle can be individuals: citizens of the country, stateless persons, foreign citizens, as well as legal entities, regardless of the form of ownership, including public associations and religious organizations.

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The constitutional principle of equality before the law and the court is relatively independent (which is confirmed by the regulation in a separate part of the constitutional norm), but at the same time, it is an integral element of a more voluminous constitutional principle of equality and, on the other hand, the principle under study can itself be divided into two components: the principle of equality before the law and the principle of equality before the court, which within the framework of constitutional and legal research should be considered inseparably from each other.

The main components of equality before the court are equal access to judicial protection and equal scope of judicial protection of the rights and legitimate interests of all participants in the judicial process. Equal access to judicial protection is ensured by an equal opportunity to initiate this form of protection (in this case, the parties have equal procedural rights); equal status of subjects when applying to the court; equal opportunity to receive qualified judicial assistance; equal access to judicial protection regardless of the location of the subject of the process.

The analysis of the implementation of the principle of equality of all people before the law convincingly proves that it can be considered as one of the most important principles of a legal democratic state. Meanwhile, it should be noted that its literal embodiment in legal reality is impossible due to the existence of such a category as "special legal statuses", the bearers of which have special rights and obligations that underlie the granting of legal immunities.

The granting of legal immunity, as a rule, is due to the presence of special powers of a subject, which he must perform properly-it is on this basis that the legislator, with the help of legal immunity, increases the degree of legal protection of these persons, and therefore the impartiality of their decisions.

Comparing the principle of equality before the law and the principle of equality before the court as two constituent elements of a single constitutional principle, it should be noted that the principle of equality before the law has a primary basis, since it assumes, among other things, the existence of such a law that would regulate and develop the provisions on equality before the court.

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