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STATE SYMBOLS OF UKRAINE: CONSTITUTIONAL AND LEGAL ASPECT

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Abstract:

Issues relating to legislative consolidation and use of state symbols of Ukraine have been reviewed. State symbols perform social, political and representative functions, which are important for the further functioning of the state. They are symbols of the independence and nationhood of the state, which distinguish it among other states in the political arena.

Key words: state symbols, independence, sovereignty, the Constitution of Ukraine

JEL Classification: F50, F59, H79

Introduction

Along with other generally recognized attributes of the nationhood, the flag, coat of arms and anthem play an important socio-political role both in the mechanism of functioning of the state and in the process of establishing its independence and sovereignty. It is natural that such symbols should have a proper system of constitutional and legal regulation, which provides for the procedure of their creation and use, and effective legal protection of these symbols as one of the necessary signs of a modern sovereign state. These and other issues objectively arose as early as in August 1991 when Ukraine gained its independence, but today, surprisingly, they still retain their significance.

1. The relevance of the propagation of knowledge about state symbols

The relevance of the propagation of knowledge about state symbols in Ukraine is unlikely to require special justification. There are a wealth of examples to prove that the lack of such knowledge in many individuals, along with imperfect legislation in this area, negatively affects the image of the state, does not contribute to the education of citizens in the spirit of respect and veneration for state symbols. Therefore, it should be noted that a significant part of the issues related to the constitutional and legal status of state symbols of Ukraine remains unresolved and underestimated in the science of constitutional law. In the meantime, it should be noted that both scholars and practitioners have become more and more interested in such issues in recent years. Significant contribution to the study of this extremely important legal institution was made by P. B. Stetsyuk.¹

The specificity of Ukraine, which poses an array of problems, is that in the past Ukraine had no full nationhood or traditions of any longstanding independent existence or law-making. This is what can explain a number of problems of modern Ukraine, in particular in the establishment and development of legislation on state symbols. It is annoying to admit, but as of 2011 except for the Constitution, in our country there is only one Law of Ukraine “On the State Anthem of Ukraine”² in force, and others, despite the mandatory requirements of Article 20 of the Fundamental Law, are not adopted, and it is difficult to find a reasonable explanation for thereof.

¹ STETSYUK, P.B. (1994): Constitutional and Legal Regulation of State Symbols of Ukraine: Thesis...

² ON THE STATE ANTHEM OF UKRAINE: Law of Ukraine (2003).

Indeed, historical sacred things such as the flag, coat of arms and anthem that every nation which remember its history must have, are not made to order, but come to people's hearts often by the thorny path of the being of the nation itself. In this respect it should be noted that the Ukrainian nation has had the opportunity to address the origins of state symbols, as already stated, in connection with the state independence of Ukraine, and the Constitution in force has obliged the relevant state bodies to adopt the necessary laws on state symbols.

Going back to the sources of state symbols, it should be noted that the basis of this concept is the word “symvolen” of Greek origin, which meant “a symbol for the members of a secret group” in Ancient Greece, and later became understood as “conventional (speech, graphic, sound) sign, which means a certain concept, an idea”.³ According to E. Fromm, the language of characters is perhaps the only universal language that humanity has created and is present in all cultures and at all times of its existence.⁴ To a certain extent, state symbols have been known since the Middle Ages, but the notion of “state symbols” as a term and as a scientific category appeared in regulatory documents only in the XX century. Without going into an extensive review of the origins and genesis of state symbols, it should be noted that the debate among scientists on state symbols continues till the present day. In our opinion, state symbols should be understood as the special, historically established, graphic or sound signs of a particular state, which are established by its constitution or constitutional law, which embody its identity and national sovereignty.

It is worth pointing out the essence of state symbols, which is manifested in the fact that they are an external manifestation of state power both within the state and abroad, especially in relations with foreign states and international organizations. In addition, and this is extremely important, they consolidate citizens regardless of their origin, social and property status, nationality, place of residence, etc. State symbols contribute to the process of strengthening the sovereignty of states, which, in substance, serves as the primary basis both for the emergence and further development of the state symbols themselves. In this regard, it should be agreed with some scholars, acknowledged experts, that the logical consequence of the loss of state sovereignty of the country is the actual elimination of its state symbols as such.⁵

Close to the notion of “state symbols” is the category of “national symbols”. In our opinion, national symbols are a set of specific features (signs, sound expressions, etc.), which in a concise way express the national idea or several ideas of historical and political nature. National symbols are a form of the abstract reflection of scientific knowledge about their people, and a form of communicating about themselves to other peoples. It is mainly distributed within the state and can only be partially known outside its borders. In relation to state symbols, national symbols, as a rule, are more ancient, because they are not subject to change and rarely find their regulatory consolidation. As for state symbols, they are enshrined in the constitution and in the legislation as official symbols of the state sovereignty. Some national symbols or part of them may be enshrined in the law and obtain the status as state symbols. For instance, the national anthem of Ukraine (its first verse and chorus) became the State Anthem of Ukraine.

State symbols usually include the coat of arms, the anthem and the flag of the state. In this regard it is worth pointing out that in some foreign countries state symbols include, for instance, the state capital (Albania, Bulgaria, Hungary), the state holiday (Albania, Armenia, Romania), and the state seal (Vatican, Romania, Slovakia, Czech Republic). For instance, according to Part 1 of Article 14 of the Constitution of the Czech Republic the state great and

³ OREL, A. (1964): Dictionary of Foreign-Language Words, p. 342.

⁴ FROMM, E. (1992): The Human Soul, p. 183.

⁵ STETSYUK, P.B. (1994): Constitutional and Legal Regulation of State Symbols of Ukraine: author's abstract, p. 11-12; TODYKA Yu. N. (1999): Fundamentals of the Constitutional System of Ukraine: Study Guide, p.84.

small coat of arms, the state colors, the national flag, the standard of the President of the Republic, the state seal and the state anthem are set as state symbols.⁶

According to Part 1 of Article 20 of the Constitution of Ukraine, the State Flag of Ukraine, the State Coat of Arms of Ukraine and the State Anthem of Ukraine are the state symbols of Ukraine.

2. The State Flag of Ukraine

When considering these state symbols, it should be noted that the State Flag of Ukraine is described in the legislation as an official cloth of the state which expresses specific ideas of political nature through the selection of the blue and yellow colors and which symbolizes the sovereignty of Ukraine. According to the Constitution of Ukraine in force, the State Flag of Ukraine is a banner of two equally sized horizontal stripes of blue and yellow colors. By the way, the term "banner" is one of today's synonyms for the word "flag" and arose even in the times of Kyivan Rus. Currently, synonyms for the word "flag" in the Ukrainian language are also the words "colors", "khorugv" (or gonfalon) which have been widely used in Ukraine since the second half of the XIV century.

The State Flag of Ukraine shall be hoisted on the buildings of government and local authorities, and on other buildings on holidays. Abroad, the State Flag of Ukraine shall be displayed on the buildings of diplomatic missions, consular offices and other official missions of Ukraine or affiliated with international organizations, according to the standards of international law, rules of diplomatic etiquette and traditions of the host country. The scaled-down version of the State Flag shall be displayed on the vehicles of the President of Ukraine, the Prime Minister of Ukraine, heads of state and government delegations, heads of diplomatic missions and consular offices of Ukraine abroad, heads of permanent missions of Ukraine affiliated with international organizations.

The State Flag of Ukraine shall be hoisted on sea-going vessels, inland-waterway vessels and other means of transport, where the President of Ukraine, the Prime Minister of Ukraine and other persons who represent the President of Ukraine or the Cabinet of Ministers of Ukraine are in an official capacity according to the maritime traditions and rules of diplomatic etiquette.

The State Flag of Ukraine may be hoisted at ceremonies and during other ceremonial events held by the government authorities of Ukraine, non-governmental organizations, and legal entities. It may be used as an element or heraldic frame for national awards of Ukraine, and emblems and flags of government and local authorities. The State Flag of Ukraine may be displayed in sign of mourning (sorrow). In such cases, at the top of the flagpole a black ribbon is attached, the length of which is equal to the length of the flag cloth. As a sign of mourning, the State Flag of Ukraine shall be lowered to half-mast. According to Resolution No. 2067-XII dated January 28, 1992 of the Verkhovna Rada (National Parliament) of Ukraine, the flag is a rectangular cloth, and the ratio of the width of the flag to its length is 2:3.

3. The State Coat of Arms of Ukraine

The State Coat of Arms of Ukraine is an official statutory conventional (symbolic) symbol which by means of a corresponding image expresses a range of specific political ideas and symbolizes the sovereignty of Ukraine. In professional and encyclopedic literature, the notion "state coat of arms" is interpreted as "... an official, distinctive sign, emblem of the state that is displayed on letter headed paper and seals of government authorities, in currency notes ...".⁷ According to the Ukrainian legislation in force, our state must have the great and small

⁶ NORMA, M. (2001): Constitutions of the European States, p. 502.

⁷ SUKHAREV, Ya. (1998): Juridical Encyclopedic Dictionary, p. 76.

state coat of arms. The Small State Coat of Arms of Ukraine is the Sign of the Princely State of Volodymyr the Great; and the Great State Coat of Arms of Ukraine must be set in with consideration for the Small State Coat of Arms of Ukraine and the coat of arms of Zaporizhian Host.

The Small State Coat of Arms of Ukraine was approved by Resolution No. 2137-XII “On the State Coat of Arms of Ukraine” of the Verkhovna Rada (National Parliament) of Ukraine on February 19, 1992. This resolution determined that the Small State Coat of Arms of Ukraine is a trident of a coloured (golden) image (in a 20:12 aspect ratio) placed on a blue background (in a 22.5:16 aspect ratio). The black-and-white image of the State Coat of Arms of Ukraine is also allowed for; and it is also established that the image of the State Coat of Arms of Ukraine shall be placed on the seals of government authorities and state administration bodies, in currency notes and postage stamps, official ID, stamps, forms of government entities, in passports of citizens of Ukraine or documents that substitute them.

The State Coat of Arms of Ukraine may be used as an element or heraldic frame for national awards of Ukraine, and as heraldic signs for emblems and flags of government and local authorities. It is displayed on border markers and checkpoints across the state border of Ukraine. It may be displayed on orders and medals of Ukraine and Ukrainian currency notes.

The State Anthem of Ukraine is a statutory musical and poetic emblem of the state, which by means of a system of musical and poetic images expresses a specific range of political ideas and symbolizes the state as a sovereign.

The term “anthem” is of Greek origin and literally means “a commendable song, a song in honor of gods”.⁸ In reference encyclopedic literature, the notion of a state anthem is given as “a majestic song of program nature, which is an official symbol of the state”.⁹ According to the Constitution of Ukraine in force, the State Anthem of Ukraine is a national anthem set to music by M. Verbytsky.

The text (words) was approved by the Law of Ukraine “On the State Anthem of Ukraine” dated March 6, 2003. The text constitutes the first verse and chorus written by P. Chubynsky in one of the well-known editions.¹⁰

The legislation has established that nationwide ceremonial events shall open and be concluded with the execution of the State Anthem of Ukraine. Its execution in military units, on warships and vessels shall be regulated by military charters. When conducting official events abroad, the execution of the State Anthem of Ukraine shall be carried out according to the rules established by the Ministry of Foreign Affairs of Ukraine in view of the practical aspects of the host country and the Law of Ukraine “On the State Anthem of Ukraine”. It is allowed to perform the State Anthem of Ukraine during sports competitions in view of the existing practice of sports organizations. During the public performance of the State Anthem of Ukraine, those who are present shall stand up when listening to it, and men shall take off their headwear. It should also be noted that the symbols of associations of citizens and religious organizations should not reproduce the state symbols of Ukraine.

In this regard, it is hard to agree with P. Stetsyuk concerning the assertion that the adoption of the Law of Ukraine “On the State Anthem of Ukraine” on March 6, 2003 has completed in substance the process of establishing the state symbols of Ukraine,¹¹ and with his point of view that Ukraine, previously, did not have any tradition of functioning of the great and small state coat of arms, that the European current constitutional and legal practice almost does not know the situation with the presence of the great and small state coat of arms, and therefore the issue arises about the expediency of establishing the Great State coat of Arms of

⁸ SPETA, P. (1977): Dictionary of Foreign Words.

⁹ SUKHAREV, Ya. (1998): Juridical Encyclopedic Dictionary, p. 77.

¹⁰ ON THE STATE ANTHEM OF UKRAINE: Law of Ukraine (2003).

¹¹ STETSYUK, P.B. (2004) State Symbols of Ukraine: Constitutional and Legal, p. 108.

Ukraine as such.¹² The fact is that according to Article 20 of the Constitution of Ukraine, the establishment of the state symbols, their description and procedure for use shall be established by the law itself, notably by the constitutional law. These prescriptions of the Constitution of Ukraine are imperative, and therefore the process of establishing the state symbols of Ukraine cannot be considered as completed, and one should not raise the issue on the expediency of establishing the Great State Coat of Arms of Ukraine.

4. The institution of legal regulation

Unlike the process of establishing the state symbols of Ukraine, which is currently in the final stage, the institution of legal regulation of the use of the state symbols of Ukraine is in the initial stage of its formation. Currently, this is a very complicated issue to solve that requires a separate study. Without reviewing it carefully, it should be noted that according to Clause 4 of Part 1 of Article 92 of the Constitution of Ukraine the procedure for the use and protection of the state symbols shall be established exclusively by the law of Ukraine. In addition, Part 6 of Article 20 of the Constitution of Ukraine clearly stipulates that the procedure for the use of the state symbols of Ukraine shall be established by the law that shall be adopted by not less than two thirds of the constitutional composition of the Verkhovna Rada of Ukraine, that is by constitutional laws. As already stated, only the Law “On the State Anthem of Ukraine” applies in our state, and other state symbols are regulated at the level of by-laws, particularly, by the resolution of the Verkhovna Rada of Ukraine “On the State Coat of Arms of Ukraine”, and by separate provisions of the group of subordinate regulatory legal acts which were adopted during the time of the Ukrainian SSR and which are in force on the territory of Ukraine only in the part in which they do not contradict the laws of Ukraine.

Particular attention should be given to the protection of the state symbols of Ukraine as a sovereign right of the Ukrainian people to their own nationhood. The protection of the state symbols shall be understood as a system of state and public measures aimed at ensuring the implementation and observance of the norms of the Constitution of Ukraine and other regulatory legal acts regulating the procedure for the establishment and use of the state symbols. In a strict sense, the legal protection of the state symbols is the establishment of legal liability for violating the rules on the use of the state symbols.

Currently, the legislation in force provides for only criminal liability: for public outrage over the State Flag of Ukraine or the State Anthem of Ukraine (Part 1 of Article 338 of the Criminal Code of Ukraine) and for illegal raising of the State Flag of Ukraine on a river or sea vessel (Article 339 of the Criminal Code of Ukraine).¹³

According to our deep conviction, the system of legal protection of the state symbols of Ukraine should not be limited to criminal liability. It would also be appropriate to envisage constitutional and legal and administrative liability, as already emphasized by other scholars.¹⁴ The Constitution of Ukraine in force has established for the citizens of Ukraine a new obligation to respect its state symbols. The established criminal liability for public abuse of the state symbols of Ukraine does not cover by no means all of possible cases of disrespect for state symbols.

Conclusion

In our opinion, it would be justified to establish administrative liability for disrespect for state symbols. There are so many cases and nobody is not liable for thereof.

For instance, on the building of a government or local authority there is hoisted the wind-worn and weather-stained cloth of the State Flag of Ukraine, which must be considered as inadmissible and the persons being guilty of thereof may be brought to administrative

¹² STETSYUK, P.B. (2004) State Symbols of Ukraine: Constitutional and Legal, p. 109.

¹³ The Criminal Code of Ukraine dated April 05, 2001.

¹⁴ STETSYUK, P. B. (1996): On the Competence of the Legislation on the State Symbols of Ukraine, p. 176

liability. Thus, there is every reason to assert that in Ukraine the acute problem is the creation of a reliable and effective system of legal regulation both for the use and protection of its state symbols. Unfortunately, the Constitution of Ukraine has not completed the process of complete registration of the state symbols. At the same time, it has laid the foundations for establishing Ukraine as an independent and sovereign state. It is only necessary to comply with the provisions of the Fundamental Law of Ukraine.

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