

CONSTITUTIONAL HUMAN AND CITIZEN RIGHTS TO ENTREPRENEURIAL ACTIVITY

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Abstract

An important factor in the development of modern society and a means to form a social state with the rule-of-law is the constitutional declaration of human rights and freedoms as the highest value. However, formal recognition of democratic and broad rights and freedoms does not imply the instant acquisition by an individual of the possibility to fully exercise the values determining the rights. It is important to create an efficient social and legal mechanism for implementation of rights and freedoms that includes guarantees to secure and protect them. That is why in this study, the author employed such research methods as logical, observation, modeling, forecasting, comparative law analysis, etc. The state recognizes a right of an individual and a citizen to entrepreneurial activity. At the same time, it shall guarantee the possibility to exercise the kind of activity within its territory. The guarantees are stipulated not only in the Constitution of Ukraine but also in the respective sectoral law. In addition, by recognizing agreements ratified by Ukraine to be part of Ukrainian legal system, legislators confirmed that human and citizen rights protection, including also such important right as the constitutional right to entrepreneurial activity, is not an exclusive internal affair of Ukraine. Despite the 30 years of market economy functioning in Ukraine, citizens still have inflated demands for the paternalistic role of the state. The principle of social state fixed in the Constitution of Ukraine is partly restricting the exercise of the constitutional right to entrepreneurial activity. In fact, equality before the law is often interpreted as the need to provide for equality of results in society with the help of fair redistribution. At the same time, the shaping a market economy in Ukraine, with the leading role of oligarchic business groups, resulted into mass pulling of their capital into offshore, investment of profits gained in Ukraine into foreign businesses and real estate. Consequently, it generates distrust and disappointment of Ukrainian citizens for their own state and its representatives, and impedes the reform process in the country.

Keywords: constitutional rights, human rights, guarantee of human rights protection, economic rights, entrepreneurial activities, market economy.

JEL Classification: K11, K14, K15, K19, K22, K31, P14

1. Introduction

After the Second World War, human rights have become a universal value and a basis for civilization development. An important growth factor of modern society, a means of shaping social and legal state is the constitutional declaration of human rights and freedoms as the highest value. However, formal recognition of democratic and broad rights and freedoms does not imply that an individual can immediately get a possibility to fully use the rewards the rights are based on. It is important to create an efficient social and legal mechanism for the exercise of rights and freedoms that would include the guarantees to secure and protect them.

As to the problem to guarantee the exercise of a constitutional human and citizen right to entrepreneurial activity, the right was recognized in Ukraine only upon the collapse of the Soviet Union. After all, under circumstances of having the Ukrainian SSR functioning as part of the USSR, it was impossible to speak of any leverage to protect the right to entrepreneurial activity, as it could not function legally. Moreover, any signs of entrepreneurial activity, as we define it today, was deemed as illegal economic activity or profiteering entailing criminal liability. In particular, the Criminal Code of Ukrainian SSR dated December, 28, 1960² that lost its effect on September 1, 2001³, set a number of grounds to charge a person with criminal liability for profiteering. Thus, Article 154 of the Code provides a definition for the concept of profiteering. It sets it as buying goods or other items that have the set retail prices set thereupon from sales enterprises (organizations), or

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² Кримінальний кодекс Української РСР від 28.12.1960 р. № 2000-05 (Criminal Code of Ukrainian SSR dated December, 28, 1960, No. 2000-05).

³ Since September, 1, 2001, a new Criminal Code of Ukraine has entered into effect, dated April, 5, 2001. It took into account the developments changing state and social life in Ukraine.

from other companies selling goods or other items to people, and to re-sell them for commercial gain. The Article of the Criminal Code of Ukrainian SSR provided for punishment for profiteering as imprisonment up to three years, either with confiscation of property, or without such, or as correctional labour term up to two years, either with confiscation of property, or without such, or as penalty from two to four hundred minimum wages⁴. Besides, the repeated speculative trading, or on a massive scale, or upon prior collusion with a group of people, or a public official, or other staff from the sales company or other company selling goods or other items abusing their official positions was punished with imprisonment from three to seven years with confiscation of property or a fine up to eight hundred minimum wages.⁵ In addition, profiteering on a specially massive scale or committed by a person with the criminal record for profiteering, or by an organized group, was punished by imprisonment from five to ten years with confiscation of property.⁶ On April, 5, 2001, a new Criminal Code of Ukraine was adopted.⁷ It deleted profiteering from the list of criminal offences.

2. Constitutional guarantees for protection of entrepreneurial rights and freedoms

The primary objective of constitutional regulation is to stipulate basic human and citizen rights and freedoms, and to create due mechanisms for their enforcement. The Constitution of Ukraine dated June, 28, 1996⁸, regulated social relations that included, along with political, ideological, and social relations, and prioritized economic relations. At the same time, the Basic Law of Ukraine defines the fundamentals of an economic system in the state through rights and freedoms of humans and citizens. In particular, a number of articles of Chapter II cover such pertinent economic rights as the right for private property (Article 41); right to entrepreneurial activity not prohibited by the law (Article 42); right to work including a possibility to earn a living by labour that one freely chooses or to which one freely agrees (Article 43); right for strike in order to protect their economic or social interests (Article 44); right to rest (Article 45); right to social protection (Article 46), a.o. The articles of the Ukrainian Basic Law illustrate a crucial change in the role of state in regulating economy, and subsequently, a change in such areas of law as civil law, intellectual property rights, and administrative law. The above-mentioned provisions of the Constitution cancelled the monopoly of state for manufacturing activity, trade, and foreign trade. What is more, the concept of the current Constitution of Ukraine is designed in a manner whereby entrepreneurship is the area prioritizing private entrepreneurial activity. It is no coincidence since the principle of a social state inscribed in Article 1 of the Constitution provides the departure from a concept of a paternalistic government. The consequence of denationalization of a large number of companies was that the present state did not have an opportunity to fully undertake responsibility for its citizens. More importantly, it is in the interests of the state to raise a new generation of entrepreneurship minded citizens that could overcome the paternalistic attitude to the role of government inherited from the Soviet times. They should be able to undertake responsibility solidary to the state for its further development and empowerment of civil society institutes.

Under the guarantee of the priority for human rights and freedoms, the foundations of a constitutional order of Ukraine shall determine a principle of freedom of entrepreneurial activity that has become an axiom for further economic growth of Ukraine. The state establishes a constitutional human and citizen right to entrepreneurial activity, while obliging to guarantee the possibility of exercising such activity within its territory. The guarantees are set not only in the Constitution of Ukraine but also in the respective sectoral laws.

⁴ Кримінальний кодекс Української РСР від 28.12.1960 р. № 2000-05 (Criminal Code of Ukrainian SSR dated December, 28, 1960, No. 2000-05).

⁵ *Idem.*

⁶ *Idem.*

⁷ Кримінальний кодекс України від 05.04.2001 р. № 2341-III (Criminal Code of Ukraine dated April, 5, 2001, No. 2341-III).

⁸ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

3. Concept and content of entrepreneurial activity

According to F. Hayek, the content of entrepreneurship is a search for new economic possibilities. It is a description of behavior but not of a line of work or an area of occupation. For an entrepreneur, the primary typical quality is activity in economic field, search for optimal economic solutions.⁹ Entrepreneurial activity in any state shall require reliable constitutional guarantees for stability. Therefore, it is not a random choice to include them into the Constitution of Ukraine, in Title II. It defines human and citizen rights, freedoms, and duties. Ukrainian Parliament started developing the law to guarantee the possibility to exercise entrepreneurial activity immediately after declaring the Declaration on State Sovereignty of Ukraine¹⁰, when Ukraine was still formally a part of Soviet Union. Article 1 of the Law of Ukraine “On Entrepreneurship” dated February, 7, 1991, stipulates that entrepreneurship is an independent, systematic activity exercised at one’s own risk, directed at production of goods, performance of works, or providing services with the aim to receive profit, exercised by natural persons and legal entities registered as subjects of entrepreneurial activity, in accordance with the procedure established by the law.¹¹ There is a slightly different but similar definition of entrepreneurship included in Article 42 of the Economic Code of Ukraine dated January, 16, 2003. It refers to entrepreneurship as a kind of economic activity and establishes that entrepreneurship is an independent initiative-based systemic economic activity at one’s own risk exercised by business operators (entrepreneurs) in order to attain economic and social results and gain profit.¹² Definitions from the stated articles of the legal acts are fully compliant with the Constitution of Ukraine dated June, 28, 1996. Its Article 42 establishes that each person shall have a right right to entrepreneurial activity not prohibited by the law. Entrepreneurial activity of people’s deputies, public officials and civil servants or public authorities or local self-government is defined by the law. The state shall provide protection of competition in entrepreneurial activity. Abuse of monopoly on the market shall not be allowed, the same as illegitimate restriction of competition or unfair competition. Types and limits of monopoly are defined by the law.¹³

The aspect of exercising of human and citizen constitutional right to entrepreneurial activity is considered in a number of research papers by Ukrainian and international scholars. We shall highlight, among others, the following works: by A. Ageyev, O. Bihniak, V. Kotiuk, M. Kravtsova, L. Nikitenko, P. Rabinovych, S. Riznyk, N. Shuklina, O. Frytskyi, F. Hayek, a.o. In particular, S. Riznyk defines it as a human and citizen right established by the Constitution of Ukraine to a direct and mediated, independent, systematic activity at one’s own risk aimed at attaining economic and social results and gaining profit.¹⁴ At the same time, he suggests differentiating between a direct and mediated entrepreneurial activity. The scholar holds that a direct entrepreneurial activity is the kind of entrepreneurial activity exercised by subjects of entrepreneurial activity, such as natural persons and legal entities, registered under the legal procedures. On the other hand, a mediated entrepreneurial activity is a kind of entrepreneurial activity exercised by natural persons through the legal entities privately owned by them.¹⁵ Other researchers, such as A. Ageyev, focus on the grounds of emergence of entrepreneurship. He claims that entrepreneurship as an economic phenomenon emerged upon availability of two interrelated circumstances, such as an organizational economic innovation and economic freedom. A number of other qualities (risk, decision-making, ownership of resources,

⁹ Hayek F. A., *The Constitution of liberty*, Chicago, 1961.

¹⁰ Декларация про державний суверенітет України від 16.07.1990 р. № 55-XII (Declaration on State Sovereignty of Ukraine dated July, 16, 1990, No. 55-XII).

¹¹ Про підприємництво: Закон України від 07.02.1991 р. № 698-XII (Law of Ukraine “On Enterpreneurship”, dated 07.02.1991 № 698-XII).

¹² Господарський кодекс України від 16.01.2003 р. № 436-IV (Economic Code of Ukraine dated January, 16, 2003, No. 436-IV).

¹³ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

¹⁴ Різник С., *Забезпечення державою конституційного права людини і громадянина на підприємницьку діяльність*: автореф. дис... канд. юрид. наук : 12.00.02 / С.В. Різник; Київ. нац. ун-т внутр. справ. – К., 2008. – С. 5-6. (Riznyk S., *Ensuring a constitutional and citizen human right to entrepreneurial activities by the state*: synopsis of the thesis for Candidate of Law: 12.00.02 / S.V. Riznyk; Kyiv National University of Internal Affairs. – К., 2008. – P. 5-6.).

¹⁵ *Ibid.* p. 8.

leadership, etc.) are associated, or non-mandatory, or supplementary.¹⁶

As mentioned above, in the Soviet times, any signs of entrepreneurship caused an immediate negative response of the governmental repression machine, and were also denounced by public opinion as not characteristic to the state regime. It is obvious that the exercise of entrepreneurial activity is impossible without support from the state. Such possibility emerged in Ukraine only upon the change of state order, and Ukraine turned to the road of building a democratic state, which was duly established in the Constitution of Ukraine.¹⁷ As of today, when mixed economy has established in Ukraine, and a large number of state-owned and municipal companies were handed over to private ownership, it is impossible to think of Ukrainian economy functioning without private entrepreneurship. After all, over almost thirty years of the country's independence, entrepreneurial activity has become the most widespread kind of activity. At the same time, taxes and duties charged from private business operators compose a lion's share of central and local budgets revenues.

An important factor that impacts the development of entrepreneurship in Ukraine is its membership in the World Trade Organization. On April, 10, 2008, Ukrainian Parliament adopted a Law "On Ratification of the Protocol of Accession of Ukraine to World Trade Organization."¹⁸ Under the Protocol, on May, 16, 2008, Ukraine became a full member of WTO. Accession to WTO enabled Ukraine to enjoy equal rights with other members and to engage in the development of rules of trade on a global market, while accounting for its own national interests. The next step on this road was the signing of Association Agreement with the European Union. As we know, the EU association process is running in Ukraine not without complications. In the past, its interruption by the president Viktor Yanukovich led to mass protests followed by his escape from the country. Eventually, Ukraine-EU Association Agreement was signed. Therewith, it was divided into two parts – political and economic. The political part of Agreement was signed on March, 21, 2014, by the current Prime Minister of Ukraine Arseniy Yatseniuk. On June, 27, 2014, at the EU Summit in Belgium the President of Ukraine Petro Poroshenko signed the economic and sectoral parts of the Association Agreement between Ukraine and the EU.¹⁹ After a lengthy ratification procedure, the Agreement fully entered into effect on September, 1, 2017. It became fully effective in terms of international law, including also the establishment of a deep and comprehensive free trade area.²⁰

As we can see, Ukraine adopted respective European and international economic standards. It gave an impetus to open new prospects for the development of national economy and its steady integration into global and European economic community. The standards were reflected in respective Constitutional provisions. In particular, by the Law no. 2680-VIII dated February, 7, 2019, the Parliament of Ukraine introduced changes to the Preamble of the Constitution of Ukraine. They established the irreversible European and Euro-Atlantic road of Ukraine.²¹ In addition, Article 9 of the Constitution of Ukraine provides that the acting international treaties, which binding force was approved by the Supreme Council of Ukraine, shall be part of the national law of Ukraine.²² Therefore, the constitutional right to entrepreneurial activity shall be guaranteed not only by the

¹⁶ Агеев А.И., Предпринимательство: проблемы собственности и культуры. Москва, 1991. – С. 10 (Ageyev A.I. *Entrepreneurship: Issues of Ownership and Culture*, Moscow, 1991, p. 10).

¹⁷ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

¹⁸ Про ратифікацію Протоколу про вступ України до Світової організації торгівлі: Закон України від 10.04.2008 р. № 250-VI (On Ratification of the Protocol of Ukraine's joining the World Trade Organization: The Law of Ukraine dated April, 10, 2008, No. 250-VI).

¹⁹ Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони від 27.07.2014 р. Офіційний вісник України від 26.09.2014, № 75, том 1, стор. 83, стаття 2125. (Association Agreement between Ukraine, of the one part, and the European Union, European Atomic Energy Community, and their member-states, of the other part, dated July, 27, 2014. Official Journal of Ukraine dated September, 26, 2014, No.75, Vol. 1, P. 83, Article 2125).

²⁰ Набула чинності Угода про асоціацію з ЄС (Ukraine-EU Association Agreement Enters into Effect) - <https://ua.korrespondent.net/ukraine/politics/3882051-nabula-chynnosti-uhoda-pro-asotsiatsiui-z-yes>, consulted on 1.10.2019.

²¹ Про внесення змін до Конституції України (щодо стратегічного курсу держави на набуття повноправного членства України в Європейському Союзі та в Організації Північноатлантичного договору): Закон України від 7 лютого 2019 р. № 2680-VIII [On introducing changes to the Constitution of Ukraine (on strategic course of the state and assuming full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization): the Law of Ukraine dated February, 7, 2019, No. 2680-VIII].

²² Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

national law of Ukraine, but also by international law provisions. Indeed, principles and provisions of international law and international treaties of Ukraine have been recognized to be part of its legal system

4. Fundamental economic rights of individuals

Basic economic rights of an individual are based on natural law. It is of high importance in the setting of building a market economy. Article 21 of the Constitution of Ukraine establishes that all humans are free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable.²³ Over a long period, it has been upheld that the state was a key “arbiter” making decisions on “awarding” certain rights to a human, or rejecting such rights. As of today, human and citizen rights cannot be arbitrarily granted, spared, or restricted by a state. In other words, human and citizen rights, including the constitutional right to entrepreneurial activity, are exterritorial. The guarantees for the exercise of the rights established in the constitutional law of any state shall not change the fact that they are assumed by a human by birth, and thus, are unalienable.

Constitutional right to entrepreneurial activity cannot be treated in a narrow sense only. It is by definition a rather broad right, as this right either encompasses or relates to other human and citizen rights and freedoms guaranteed by the Basic Law. For instance, the right to free development of one’s personality (Article 23), right to own, use, and manage their property, the products of one’s intellectual and creative activities (Article 43). For example, exercise of the right to freedom of speech guaranteed by Article 34 of the Constitution of Ukraine can also be exercised in the form of registering the respective private media. Publishing a magazine, newspaper, or other printed outlet, or broadcasting radio or television products, one shall simultaneously exercise two important constitutional rights such as the right to freedom of thought and speech, and the right to entrepreneurial activity, whereas one shall gain profit from exercising the activity.

As experience shows, with the help of mass media, one can largely influence public opinion. Later, it could be “converted” into the results of parliamentary, presidential, or local elections. A striking case in this point is the recent presidential election campaign in Ukraine. On April, 21, 2019, on the basis of the results of the second voting round, with the extremely high support of 73.22 % of voters, a showman Volodymyr Zelenskyi gained a landslide victory.²⁴ Over a long time, he has been connected with the operations of a national private TV channel “1+1”. The television channel broadcast the scope of political advertising for the presidential candidate established by the law. However, in addition, on the day before the election day for the second round, they also showed a feature film “Servant of the People” where the current President of Ukraine acted as the head of Ukrainian state. Thereby, the protagonist of the film was successfully fighting corruption, bribery, poverty, and other phenomena largely affecting the pace of economic and political reform in Ukraine, and highly supported by Ukrainian voters. Therefore, in our view, it was a disguised political advertising of the presidential candidate that had a significant impact on the voting results. The same situation repeated during the early parliamentary election in Ukraine, on July 21, 2019, with the winning party of the “Servant of the People” (with 43.16 % of votes) on a multi-mandate constituency.²⁵ With account for voting results for the candidates from this political party on one-mandate constituencies, it was the first time in the contemporary history of Ukrainian state that the “Servant of the People” party did not require any prior coalition agreements with other winners of parliamentary elections, but managed to have a mono-majority in the Parliament.

²³ *Idem*.

²⁴ ЦВК оголосила остаточні результати президентських виборів (The CEC Declares Final Results of Presidential Elections) - <https://www.dw.com/uk/цвк-оголосила-остаточні-результати-президентських-виборів/a-48543663>, consulted on 1.10.2019.

²⁵ Позачергові вибори народних депутатів України 2019 (2019 Early Parliamentary Elections in Ukraine) - https://www.cvk.gov.ua/pls/vnd2019/wp306_npt001f01=919.html, consulted on 1.10.2019.

5. Requirements and restrictions on exercising entrepreneurial activity

Guarantees for the exercise of entrepreneurial activity do not imply that the state does not impose any requirements or restrictions thereupon. As rightfully stated by O. Bihniak, the exercise of the right to entrepreneurial activity is not merely reduced to the reserving of this right for a business operator, but a possibility to use the right under the procedures regulated by the current law.²⁶ In other words, the law of each state establishes a number of requirements to persons who have an intention to engage in entrepreneurial activity. The right to engaging in entrepreneurial activity is not preconditioned by a person's citizenship status. However, in order to be able to exercise entrepreneurial activity in Ukraine, a natural person shall meet the requirements of the economic and civil laws of Ukraine, and enjoy full legal capacity. Pursuant to Article 34 of the Civil Code of Ukraine, full legal capacity shall be enjoyed by a person arriving at majority age (18 years of age).²⁷ At the same time, the Article of the Civil Code of Ukraine establishes that in case of registering a marriage of a natural person under age, they assume full civil legal capacity from the moment of registering the marriage.²⁸ At the same time, the law does not provide any possibility to exempt a person of full civil legal capacity in case a person terminated marriage prior to coming off age, or in case the marriage was declared invalid on the grounds other than illegal conduct of the underage individual.²⁹ The following article 35 of the Civil Code of Ukraine provides that full civil legal capacity can be assigned to a person arriving at the age of 16 who works under work contract, and also to an underage person registered as a parent of a child. Granting full civil legal capacity is conducted under decision of the guardianship authority upon request of the interested person, and upon written consent from parents (adoptive parents) or guardians; in case the consent is not available, full civil legal capacity can be granted upon court decision.³⁰ Article 35 of the Civil Code of Ukraine also regulates the aspect of exercising entrepreneurial activity by a person under 16 years of age. In particular, it is established that full civil legal capacity can be granted to a natural person who arrived at 16 years of age, and who wishes to engage in entrepreneurial activity. Upon written consent from parents (adoptive parents), a guardian or a guardianship authority, the person can be registered as an entrepreneur. In this case, a natural person shall assume full civil legal capacity from the moment of state registration in the status of an entrepreneur. Full civil legal capacity granted to a natural person shall cover all civil rights and obligations. In case the work contract is terminated, or in case a natural person terminates their entrepreneurial activity, the granted full civil legal capacity shall be retained.³¹

According to L. Nikitenko, the right to entrepreneurial activity, the same as any other rights, are exercised with the help of legally binding actions of the right holders (authorized to hold the right). Nevertheless, the selection of methods and conditions to exercise the right depends not only upon the subject, but also on the specific content of the right defined by the state.³² It is unquestionable that the preconditions for the exercise of the right to entrepreneurial activity guaranteed by the Constitution of Ukraine shall be not only having a natural person arriving at the 16 years of age. The state can and shall set restrictions on the exercise of entrepreneurial activity. It refers, for instance, the issue of establishing organizational forms for its exercise; legalization of entrepreneurial activity; restricting the right to the exercise of entrepreneurial activity upon court decision, as much as its prohibition. However, the activity of public authorities shall be exercised exclusively under the law. According to M. Kravtsova, the lawfulness of activities of public authorities is the most important moment of their legal status. The state shall abide by the Constitution and the laws of Ukraine in all

²⁶ Бігняк О. Поняття права на підприємницьку діяльність / Бігняк О. // Підприємництво, господарство і право. – 2006. – № 2. – С. 99–102. (Bihniak O. *Notion of the right to entrepreneurial activity*, „Entrepreneurship, economy, and law”, 2006, no. 2, p. 99-102).

²⁷ Цивільний кодекс України від 16.01.2003 р. № 435-IV (Civil Code of Ukraine dated 16.01.2003 № 435-IV).

²⁸ *Idem*.

²⁹ *Idem*.

³⁰ *Idem*.

³¹ *Idem*.

³² Нікітенко Л.О., Умови реалізації конституційного права на підприємницьку діяльність // Форум права. 2011. № 3. - С. 559. (Nikitenko L.O., *Terms for Implementing a Constitutional right to Entrepreneurial Activity*, „Forum of Law”, 2011, No. 3. – P. 559).

its actions; it shall fulfil the laws, and also contribute to their compliance by others, within its competence.³³

The respective requirements are established as to natural person and to legal entities wishing to engage in entrepreneurial activity. In particular, for a natural person, a basic requirement for registration is the place of residence, such as a residential house, an apartment, or other facilities fit for living, in the respective settlement wherein the person resides on a permanent basis, for the most time, or temporarily, located at a certain address, to contact a natural person-entrepreneur. In terms of a legal entity, one must state its whereabouts in the relevant entitling documents, such as the address of an entity or a person who act on behalf of the legal entity pursuant to the statutory documents of the legal entity. Certain requirements are also set upon signing work contracts by entrepreneurs with citizens (contract, agreement). In particular, pursuant to the acting Code of laws on labour, an entrepreneur shall provide for due and safe working conditions, payment not below the minimum wage established under the law, and its timely receipt by employees, and other social guarantees, including social and medical insurance, and social provision under the current law of Ukraine.³⁴

Constitutional recognition of the right to exercise entrepreneurial activity is always accompanied by a number of restrictions that enable a legislator to rather actively interfere with the regulation of freedom of entrepreneurial activity. State regulation of entrepreneurial activity, actively used in the 21st century, is a tool to introduce state economic policy with the help of laws and by-laws, other regulatory legal acts that define economic public order. In particular, some kinds of economic activity can be restricted by a legislator. Moreover, some of them can be directly banned, as justified by national security interests, social interests, or public order interests. It refers, for instance, production of radioactive materials, weapons, narcotic drugs, some types of medications affecting life and health of individuals, and also some other types of entrepreneurial activity. Specifically, recently, the President of Ukraine Volodymyr Zelenskyi stated that the problem of illegal extraction of amber in Zhytomyr, Volyn, and Rivne regions of Ukraine has grown to the scale of natural disaster.³⁵ Ukraine is a leader in Europe in terms of amber deposits. Therewith, companies licensed by the state to extract it mine about 4 tons of the mineral annually. In fact, it is only a small share of the actual extraction volumes of amber in Ukraine. According to some estimates, illegal volumes of amber extraction make 120 to 300 tons a year. No one can tell the real numbers. The rough total annual revenues in this market amount up to USD 300 mln. At the same time, official permits for extraction are only held by six companies – two private companies, and four public companies. Moreover, in the recent period, they have not been functioning either due to bankruptcy or bureaucratic issues.³⁶ It is no doubt that the consequences of such illegal amber extraction bring not only the barbarian disruption of environment but also huge losses to central and local budgets.³⁷ Therefore, pursuant to Article 93 of the Constitution of Ukraine, on September, 4, 2019, President Volodymyr Zelenskyi submitted to the Parliament for advanced consideration a draft law “On Introducing Changes to the Criminal Code of Ukraine on Criminal Liability for Illegal Extraction of Amber or Its Illegal Transportation Across the Customs Border of Ukraine.” The draft law was marked as urgent for advanced consideration by the Verkhovna Rada of Ukraine. At the same time, the head of state assigned to the Cabinet of Ministers of Ukraine to submit to the Parliament a draft law on legalization of amber extraction, before October, 1, 2019. It is planned to be considered in

³³ Кравцова М., Правові гарантії законності державного регулювання підприємницької діяльності // Вісник Харківського національного університету внутрішніх справ. - 2003. - Вип. 24. (Kravtsova M., *Legal guarantees for legitimacy of state regulation of entrepreneurial activity*, „Journal of Kharkiv National University of Internal Affairs”, 2003, Issue 24).

³⁴ Кодекс законів про працю України від 10.12.1971 р. № 322-VIII (Labour Code of Ukraine dated December, 10, 1971, No. 322-VIII).

³⁵ Незаконний видобуток бурштину набув масштабу екологічного лиха (Illegal Amber Extraction Assumes the Scale of Environmental Disaster) - <https://www.unn.com.ua/uk/news/1818426-nezakonnij-vidobutok-burshtynu-v-ukrayini-nabuv-masshtabu-ekologichnogo-likha-zelenskiy>, consulted on 1.10.2019.

³⁶ «Бурштинова лихоманка» загрожує Україні екологічною катастрофою (“Amber Fever” Brings a Threat of Environmental Disaster to Ukraine) - <https://www.dw.com/uk/бурштинова-лихоманка-загрожує-україні-екологічною-катастрофою/a-19077234>, consulted on 1.10.2019.

³⁷ *Idem*.

December.³⁸ The state can and shall take measures to affect certain operators of entrepreneurial activity in order to protect consumer rights. Indeed, entrepreneurs might exercise production activities threatening the environment; produce low quality industrial or food products non-conformant with the established state standards, that threaten life and health of consumers; make use of their monopoly status in the market for unjustified profit.

6. Conclusions

The Basic Law of Ukraine declares the constitutional right to entrepreneurial activities, in line with other human and citizen rights, as unalienable and infrangible. Therefore, it can be stated that the Constitution of Ukraine is compliant with European and international standards in this respect. By recognizing agreements ratified by Ukraine as part of Ukrainian legal system, a legislator confirmed that protection of human and citizen rights, including such important right as a constitutional right to entrepreneurial activity, shall not be exclusively a domestic affair of Ukraine. The Constitution of Ukraine recognized all types of ownership as equal, thus declaring equality of all entrepreneurs under the law. At the same time, it is certain that the state, considering its own specific interests, and also governed by the interests of national security or social order, shall always restrict or ban certain kinds of entrepreneurial activity.

Despite the thirty years of market economy functioning in Ukraine, citizens still have the inflated demands for a paternalistic role of the state. A principle of a social state established in the Constitution of Ukraine partly restricts the exercise of a constitutional right to entrepreneurial activity. After all, equality under the law is often treated as the need to provide equality of results in society via a fair redistribution. At the same time, the establishment of market economy in Ukraine, with the leading role of oligarchic business groups, led to a mass pulling out of capitals to off-shore, investment of profits gained in Ukraine to foreign businesses and real estate. It further generates distrust and disillusionment of Ukrainian citizens for their own government and its representatives, and impedes reform in the country.

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³⁸ Зеленський зареєстрував у Раді законопроект про кримінальну відповідальність за видобуток бурштину (Zelenskyi registers at the Parliament a draft law on criminal liability for amber extraction) - https://zik.ua/news/2019/09/04/zelenskyy_zareiestruvav_u_radi_zakonoproiekt_pro_kryminalnu_vidpovidalnist_1640029, consulted on 1.10.2019.

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