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Democratic state-legal regime: Twenty-First Century threats

ДЕМОКРАТИЧНИЙ ДЕРЖАВНО-ПРАВОВИЙ РЕЖИМ: ЗАГРОЗИ ХХІ СТ.

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Abstract

The article deals with the democratic state-legal regime in the light of the twenty-first century threats. It is noted that the presence of formal features of a democratic regime does not always ensure the functioning of such mechanisms and institutions of democracy as the division of power, freedom of speech and assembly, fair elections and others.

The main internal and external destructive elements influencing both settled and developing liberal-democratic regimes are determined. Emphasis is placed on the destructive activities of the Russian Federation in destroying and discrediting the basic institutions of liberal democracies and popularizing the China model of an undemocratic state-legal regime. The influence of scientific and technological progress, political, social, economic, environmental and military factors on the transformation of liberal-democratic regimes and the world global order is revealed. The danger (for the whole liberal-democratic world in general and Ukraine in particular) of the use of such a phenomenon as "hybrid war" by the Russian Federation in the context of the spread

Анотація

У статті йдеться про демократичний державно-правовий режим у світлі загроз ХХІ століття. Зазначається, що наявність формальних особливостей демократичного режиму не завжди забезпечує функціонування таких механізмів та інститутів демократії, як поділ влади, свобода слова та зборів, чесні вибори та інше.

Визначено основні внутрішні та зовнішні деструктивні елементи, що впливають як на сталі, так і ті що розвиваються ліберально-демократичні режими. Акцентовано увагу на руйнівній діяльності Російської Федерації щодо знищення та дискредитації основних інститутів ліберальних демократій та популяризації китайської моделі недемократичного державно-правового режиму. Розкрито вплив науково-технічного прогресу, політичних, соціальних, економічних, екологічних та військових факторів на трансформацію ліберально-демократичних режимів та світового порядку. Вказується на небезпеку (для всього ліберально-демократичного світу загалом та України зокрема) використання такого явища,

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of the fascist concept of "Russian world" is pointed out.

It is proved that there is the need to preserve a liberal-democratic state-legal regime, as the most successful of all regimes offered to humanity, for future generations.

Key words: democratic regime, digital dictatorship, form of state-legal regime, hybrid war, illiberal democracy, liberal-democratic regime, rule of law, state, world order.

Introduction

The theory and philosophy of law defines the form of the state regime as a manner (order) of exercising state power by certain methods. A clear division of all states according to the form of state regime into democratic and undemocratic is established (Rabinovych, 2021). In the twentieth century, the struggle for world domination was waged by liberal-democratic (as the most progressive and widespread among democratic regimes), communist, and fascist (national socialist as its variety) regimes. As a result of the Second World War, fascism and Nazism were finally eliminated as a phenomenon, and its manifestations in the state and legal sphere were condemned and banned.

After the collapse of the USSR as the main world leader of the communist regime in 1991, unfortunately, a proper international legal assessment of its criminal activities was not given, and it continued to exist in one form or another in some states (China, North Korea, Cuba). But the idea has taken root in the world that the liberal-democratic regime remained the only viable mechanism for building a state of general peace and prosperity.

In his conceptual work "The End of History and the Last Man in 1992", Francis Fukuyama (1992) actually ascertained the victory of the liberal-democratic regime over the undemocratic – fascist and communist ones. This meant that states, which wanted to achieve a high standard of living and freedoms of their citizens, had only one path left, namely through the development of democracy, the rule of law, civil society and market economy.

Thus, the number of countries that can be considered electoral democracies in the mid-2000s increased to more than 110 (in the early 1970s there were about 35 countries). Liberal

як «гібридна війна» Російською Федерацією в контексті поширення фашистської концепції «російського світу».

Доведено, що існує необхідність збереження ліберально-демократичного державно-правового режиму, як найуспішнішого з усіх режимів створених людством, для майбутніх поколінь.

Ключові слова: держава, форма державно-правового режиму, світовий порядок, гібридна війна, верховенство права, демократичний режим, ліберально-демократичний режим, неліберальна демократія, цифрова диктатура.

democracy has become the standard state-legal regime for most of the world, if not in practice, then at least as an aspiration. Samuel Huntington (1993) called it the "third wave" of democratization. At the same time, you need to understand that the form of political regime cannot be established by analyzing the content of constitutional regulation, as even in the case of its full legal form (for example, declaring a democratic state in the constitution), the real political regime is often inadequate legally declared (Shemshuchenko, 1998). In 1997, Fareed Zakaria (1997) used the term illiberal democracy for such states. That is, the presence of formal features of a democratic regime does not always ensure the functioning of such mechanisms and institutions of democracy as the division of power into legislative, executive and judicial, freedom of speech and assembly, and others.

The purpose of the article is to determine the advantages of the liberal-democratic regime, to assess its current state and prospects for development. The authors pay great attention to hybrid, illiberal democracies and undemocratic regimes and their threats to classical liberal-democratic regimes. There is an urgent need to classify the factors that cause the transformation of liberal-democratic regimes in the twenty-first century and to analyze the consequences of the impact of these factors both on individual states and the world order.

Theoretical Framework or Literature Review

Many researchers have worked on the problems of establishing a democratic regime in the world, among whom Francis Fukuyama (1992) played a significant role in this process. In his conceptual work "The End of History and the Last Man in 1992", Francis Fukuyama (1992) actually

ascertained the victory of the liberal-democratic regime over the undemocratic – fascist and communist ones. An important contribution to the standards of liberal democracy was the scientific work of Samuel Huntington (1993), who, studying state-legal regimes for most countries, called them the "third wave" of democratization. In 1997, Fareed Zakaria used the term "illiberal democracy" in his writings.

Yuval Noah Harari (2018) demonstrated the problems of slipping into undemocratic regimes, using the examples of such countries as Turkey and Russia, pointing out that they are openly moving towards dictatorship. China skillfully exploits the open markets of liberal democracies, although it is against any democratic changes within the country, and the US and EU, as leaders of the liberal-democratic world, are experiencing a crisis due to Brexit and the presidency of Donald Trump.

Niall Ferguson (2020) in his work "The Great Degeneration: How Institutions Decay and Economies Die" points to the serious structural problems of liberal-democratic regimes that have affected such basic institutions as democracy (electors vote for governments that increase public debt, which violates the principle of "generational partnership"), capitalism (a complex market regulation system, which does not protect against crises and even generates them), the rule of law (threat of a police state, interference of European law in common law, increasing complexity of common law, rising cost of legal services and forming the "rule of lawyers") and civil society.

Considering liberal-democratic regime, George Soros (2021) uses the term "open society" and emphasizes the rapid development of artificial intelligence and machine learning, which has created tools of social control that give repressive regimes their inherent advantage over open societies. For dictatorships, these are useful tools, but for open societies they are deadly.

The scientific works of Timothy Snyder (2020) are also of great importance in the field of identifying threats to liberal-democratic regimes. In particular, it is about Putin's use of Ivan Ilyin's fascist ideology in building an authoritarian model of the state regime in Russia.

Methodology

The methodological basis of the scientific research of a democratic state-legal regime consists of a set of philosophical, general and

special scientific methods of obtaining scientific knowledge. In particular, the following methods were used in the article: dialectical method, hermeneutic method, method of system and structural analysis, methods of analysis and synthesis, functional, formal-legal, theoretical-legal, historical-legal methods and modeling method. An important emphasis in the research process was made on the method of comparative legal analysis, which made it possible to clarify the peculiarities of the development of state-legal regimes in different countries.

The method of analysis of scientific articles, monographs, encyclopedias and other documents and sources contributed to collect and organize the most relevant information on certain topic. With the help of the method of observation it was possible to study the peculiarities of the development of the liberal-democratic state-legal regime in the twenty-first century.

Results and Discussion

The spread of the democratic regime, often in its illiberal forms, has had a remarkable effect. The pace of international trade and investment was ahead of world GDP growth. Between 1970 and 2008, world production of goods and services quadrupled, and this growth occurred in almost all regions. The number of people living in poverty in developing countries fell from 42% of the total population in 1993 to 17% in 2011 (Fakuyama, 2020). That is, the level of well-being, education, medicine and security increased many times around the world. The report of a group of researchers from 50 countries was published in "The Lancet", one of the most authoritative medical journals, which demonstrated that in 1990 to 2010, mortality from overeating and obesity exceeded mortality from starvation. This is the first time in human history!

It would seem that after such great achievements of democratic regimes, their global crisis or collapse in individual states seems impossible. This is exactly the case when folk wisdom "One does not seek good from good", or as the British people say "Let well alone", did not work. And while it was predictable that liberal democracy did not take root in Afghanistan and Iraq after US intervention, and Russia's return to authoritarian traditions was disappointing, though not surprising, the threat of democracy in the most established democracies came as a surprise. Hungary was one of the first in Eastern Europe to overthrow the communist regime and join NATO and the European Union, reaffirming the strict

demands of these organizations as a liberal democracy. But under the leadership of Viktor Orbán and his Fidesz party, it was the first to follow what Viktor Orbán called "illiberal democracy." However, the results of voting in the UK and the US – for Brexit and Donald Trump – were more surprising respectively (we are talking about the election of Trump as President of the United States in 2016). These two leading democracies, which were the creators of the modern liberal world order, begin to turn towards narrower nationalism (Fakuyama, 2020).

Similar concerns are expressed by Yuval Noah Harari (2018), who points out that Turkey and Russia are openly moving towards dictatorship, China skillfully uses open markets of liberal democracies, but it is against any democratic changes inside the country, and the US and EU as leaders of the liberal-democratic world are experiencing a crisis due to Brexit and the presidency of Donald Trump.

Niall Ferguson (2020) in his work "The Great Degeneration: How Institutions Decay and Economies Die" points to the serious structural problems of liberal-democratic regimes that have affected such basic institutions as democracy (electors vote for governments that increase public debt, which violates the principle of "generational partnership"), capitalism (a complex market regulation system, which does not protect against crises but also generates them), the rule of law (threat of a police state, interference of European law in common law, increasing complexity of common law, rising cost of legal services and forming the "rule of lawyers") and civil society (the state of modern civil society in decline, both through technology and through excessive state intervention). This has led to open ridicule of Western democracy by supporters of "state capitalism" in China and other countries.

Fareed Zakaria (2004) notes that a significant internal problem of democracy is the need to partially restrict decision-makers in the country from strong influence of interested groups, lobbyists and political campaigns, in other words – from the excessive influence of democracy. Such excessive influence leads to a crisis and the decline of power as such. It goes from muscles to brains, from old corporate monsters to clever startups, from dictators to people in city squares and cyberspace (Naim, 2017). Under such circumstances, states with liberal-democratic regimes become vulnerable to the influence of authoritarian regimes.

Considering liberal-democratic regime, George Soros (2021) uses the term "open society" and emphasizes the rapid development of artificial intelligence and machine learning, which created tools of social control that give repressive regimes their inherent advantage over open societies. For dictatorships, these are useful tools, but for open societies they are deadly. At the same time, Soros openly calls Vladimir Putin's Russia a mafia state and the main enemy of the "open society." He points to the threat of total control over the people in China if a social credit system is introduced, which could actually lead to the construction of a digital dictatorship.

Russia and China play the role of an external factor influencing the change of the liberal-democratic regime as a whole and its versions in individual states. These two states are not liberal democracies, but if they became liberal democracies in the spirit of Western states, all major states would have stable regimes based on popular consent and the rule of law. Unfortunately, these states are still moving in other directions (Zakaria, 2004). The policies of Russia and China are aimed at creating a new world order, in which they want to take leading roles with appropriate international influence and weight. These states are trying to use different approaches to the transformation of the liberal-democratic regime, giving it a secondary character on a global scale.

In Russia, during Vladimir Putin's rule, a state that externally tries to preserve the formal features of a liberal-democratic regime (elections, the rule of law, market economy) was created, but it is essentially built by the will of one man – Putin and the clans that provide him with absolute power (fully controlled representatives of the executive, legislative and judicial branches of government, oligarchs, special services, power agencies (we deliberately do not call them law enforcement agencies). For complete obedience to Putin, the representatives of these clans are removed from the jurisdiction of the law and can carry out their professional and personal activities in accordance with their informal rules of conduct (if such rules are established at all, because arbitrary decisions of clan leaders are a more convenient management tool). Thus, it is obvious that Russia has all the elements of a criminal organization, mafia state, as G. Soros (2021) wrote. After all, instead of the rule of law and democratic elections, informal rules are practiced. They are based on boundless loyalty to Putin and imitation of elections with predetermined results. Russia has created the media, through which Putin controls society and,

in combination with the punitive and repressive system, renders impossible any uncontrolled manifestations of the liberal-democratic regime. As for the Internet, Russia has in fact created its own cyber troops, which are very active in interfering in the information sphere, especially before the elections in liberal democracies (the example of the 2016 presidential election in the United States is typical).

Timothy Snyder's (2020) view of Putin's use of Ivan Ilyin's fascist ideology in constructing an authoritarian model of the state regime is correct. This model proposes to build its own special form of state in Russia, which would correspond to the Russian national historical data, be based on the power of one ruler and the "purity and objectivity" of the Russian nation. In 2010s, Putin referred to Ilyin's authority to explain why Russia should undermine the European Union and invade Ukraine. Putin's attempt to give his kleptocratic regime a certain messianic color is obvious, but in this way we see fascism modernized in the 21st century, which under the guise of the "Russian world" is opposed to the liberal-democratic regime.

Thus, Putin's Russia is not trying to propose a replacement or improvement of the liberal-democratic regime (it is difficult to imagine the popularity of rehabilitated fascism in the version of the "Russian world" or its integration with the real liberal-democratic regime), but focuses its efforts on its destruction and discredit. At the same time, it seems that Russia does not really understand the threatening consequences for itself.

China, unlike Russia, is trying to offer the world its hybrid version of the state regime. The Chinese Communist Party established its government in 1949 and maintains its monopoly to this day. Having gained the bitter experience of the policy of the "great leap forward" and the "cultural revolution", China embarked on the path of building a market economy. Using all the tools of a market economy, combined with state monopolies, the opening of free economic zones, cheap labor, and a stable political situation (a dictatorship can provide such stability), the Chinese Communist Party has managed to ensure sustainable economic development and overcoming total poverty in recent decades. Chandran Nair (2020) even notes that China is the best example of a strong state in the developing world today, but he also mentions that such political stability is due to the government's authoritarian measures against dissent. Daniel Bell (2017) describes the "China

model" as democracy at the bottom, experimentation in the middle, and meritocracy at the top. He proposes renaming the Chinese Communist Party as the "Chinese Meritocratic Union", but he acknowledges the rude treatment of domestic critics and minority groups in western China.

Revealing the positive aspects of the "China model", it should be noted that economic growth and technology, first of all, China owes to countries with liberal-democratic regimes, which provide markets and innovations. Although capitalism has succeeded in creating material goods, it cannot be relied upon alone to ensure freedom, democracy and the rule of law (Soros, 2018). In fact, China is generally trying to separate these concepts, fully developing capitalism without providing such basic concepts for the liberal-democratic regime as freedom, democracy and the rule of law.

Despite China's significant achievements in the field of economic growth and poverty reduction in recent decades, its model itself still needs political transformation (especially the formalization of the change from a communist regime to a meritocratic one, with elements of democracy). But we can assume that the states of the Asian region will use the "China model" as opposed to the liberal-democratic regime.

Thus, we are witnessing a serious threat of recession of liberal-democratic regimes and their possible transformation into illiberal democracies, or in the worst case, into openly authoritarian or totalitarian undemocratic regimes. And this happens under the pressure of certain factors, the main of which are:

- the spread of radical nationalism (fascist policy of the "Russian world", Russia's support for radical movements in the European Union);
- radicalization of identity politics and excessive pressure of interested groups, lobbyists and political movements on state institutions, which leads to the introduction of gender or racial quotas in politics, economics, business or education and in fact violates the basic principle of democracy and law – formal equality;
- the threat of digital dictatorships, the use of cyberspace to fake public opinion, mass job losses due to the robotization of markets;
- ill-conceived migration policy;
- accumulation of significant debt obligations to future generations;

- environmental problems due to increasing economic growth rates and corresponding consumer demand;
- excessive influence on democratic governments and the general crisis of power;
- speculation on the problems of the liberal-democratic regime and its erosion by the elements of the undemocratic regimes of Russia and China;
- the conduct of the World Hybrid War, as the latest global international confrontation that arises in the modern geopolitical system, the struggle for dominance and influence, which is conducted by the forces of states, their coalitions and non-state actors. It involves the destruction of the existing global political system and international legal mechanisms to ensure it in a world of chaos. The World Hybrid War is conducted with the simultaneous use of conventional weapons and means of non-traditional violence (irregular, disorganizing, including cybersecurity, terrorist, criminal, etc.) in various operational areas – military, intelligence, subversive, psychological, diplomatic, political, informational, economic, social, financial, infrastructural, energy, etc. (Horbulin, 2017). An example of the hybrid war that has begun is Russia's aggression against Ukraine in 2014 and the further escalation of this conflict.

Some of these factors are due to the objective internal transformation of the liberal-democratic regime, and some of them are deliberately exacerbated by the World Hybrid War.

Moreover, the level of influence of the above factors directly depends on the level of the development of the liberal-democratic regime in a given state. The United States and the European Union, as leaders of the democratic world, have full influence over their regimes. Formed over a long period of time, their democratic institutions are not always able to fully resist the twenty-first century threats. It necessitates the development of new, more effective, guarantees for the preservation of the liberal-democratic regime. The success of this process determines whether the construction of a full-fledged liberal-democratic regime in developing countries can be completed.

The last US presidential election, in which a member of the Democratic Party Joseph Biden was elected president, showed the possibility of a return to the liberal-democratic course. We also see an obvious disappointment of UK voters to Brexit. But threatening signals have been

sounded and will continue to be heard unless adequate measures are taken. This is especially true of countering Russia's aggressive policy in its hybrid war against the entire liberal-democratic world and Ukraine first of all.

Ukraine is a demonstrative state in building a liberal-democratic regime on a global scale. This is due to its geopolitical position. After all, if Ukraine manages to fully and realistically ensure the functioning of the liberal-democratic regime with all the mechanisms and institutions, then it will be a signal for other states that balance on the border of democratic and undemocratic regimes. The European Union and the United States will strengthen their positions as the world's leading democracies and gain a serious partner for cooperation. For Russia, this will mean the final collapse of its fictitious democracy (or hybrid democracy) with a possible disintegration into separate independent states.

With a negative result or declarative development of the liberal-democratic regime in Ukraine, there is a threat to its territorial integrity or entering the field of influence of Russia, which will inevitably lead to stagnation. Putin's Russia will be able to satisfy its imperial ambitions and promote the so-called "Russian world."

There is no doubt that Vladimir Putin and his entourage understand the importance of Ukraine for Russia. A successful and free Ukraine will destroy the myths of the "Russian world" about the special path of Russia, and Ukraine is an integral part of it. That is why Russia first tried to absorb Ukraine economically, especially during the presidency of Viktor Yanukovich, and after the Revolution of Dignity and in fact, resorting to both military and non-military actions in a hybrid war (occupying Crimea and part of Ukrainian territories in Donbas). Zbigniew Brzezinski (2012) warned against such a scenario in 2012, noting that if the United States does not support the unification of the West, the consequence may be that Russia will use its energy reserves, which create hostility, and – having dared because of the disunity of Europe – will try to quickly absorb Ukraine. However, the rapid absorption of Ukraine did not work out, but we understand that Russia has not abandoned its plans in this direction.

The internal effect of establishing Ukraine as a state with a liberal-democratic regime will provide it, first of all, with sovereignty and territorial integrity, and in general with the well-being and prosperity of its citizens. Even being

on the difficult path of building a democratic regime, one can determine the advantages of those insignificant achievements that Ukraine has managed to achieve. Throughout the history of statehood, Ukrainians have not had the opportunity to elect or be elected to government, to conduct business activities with access to world markets, to build civil society, to study (both in Ukraine and abroad) and to defend their rights in their country, including the unwritten right to revolt against the criminal authorities in 2004 and 2014. It may seem strange, but the level of well-being and opportunities of Ukrainians that we have today was not present in previous generations (who lived in the Soviet Union or in the 90s will understand this phenomenon), but it is obvious that this level is insufficient compared to developed liberal democracies. We are still in the process of building a liberal-democratic regime, and the Ukrainian welfare state will be its result.

Conclusions

Summing up, it is obvious that a comprehensive approach is needed to understand the causes of the crisis of democratic regimes and ways to get out of it. It is also an indisputable fact that both stable liberal democracies and young democratic regimes have been transformed in accordance with the requirements of a modern open society, scientific and technological progress, the ecological state and resistance to the destructive influences of undemocratic regimes. There is an evident need to preserve the most successful state-legal regimes proposed to humanity for future generations, and this should be a strategic goal for today's open societies.

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