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CONSTITUTIONAL HUMAN RIGHT TO THE SECRET OF CORRESPONDENCE IN THE STATES OF THE AMERICAN SPACE

Summary. The article is devoted to the analysis of the legislation of the constitutional right to the secret of correspondence in the states of the American space at the national and international level. The author proposed a classification of constitutions of American states and grouped into six groups, namely: "British", "American", "Dutch", "French", "Spanish" and "Danish". Citizens of the American states that are members of the "Organization of American States" and have ratified the American Convention on Human Rights have legitimate reasons to defend their violated right to the secret of correspondence (Article 11 of the Convention) not only within the competence of the courts of their state, but also at the international, inter-American level requesting protection from the Inter-American Court of Human Rights (San Jose, Costa Rica), after having undergone an agreement with the Inter-American Commission on Human Rights.

The main results of the research are to determine the three forms of formulation of the constitutional norm: its legal form in the form of "freedom from interference with correspondence" (as part of the "freedom of expression") (the "British" group of states and the dependent territories of France); and / or a component of the "right to private and family life" ("American" group); or independent "right to inviolability of correspondence" ("French" group of

independent states, "Portuguese", "Spanish" and "Danish group" of states and dependent territories). Also, author proposed compared the constitutional experience of securing the correspondence of American states with the experience of Ukraine. The author comes to conclusions about the closest similarity of the mentioned constitutional norm enshrined in the Constitution of Ukraine with the "French", "Portuguese", "Spanish" and "Danish" groups of constitutions, with the only exception being that the restriction of the right to inviolability of correspondence is possible not only on the basis of a court decision, but on the basis of the decision of the special competent authority, which is absent in Ukraine.

Key words: *correspondence, the right to the secret of correspondence, the right to private and family life, the right to the secret of telephone conversations.*

Formulation of the problem. The problem of ensuring the constitutional rights to the secret of correspondence, telephone conversations, telegraph and other correspondence (hereinafter - the right to the secret of correspondence) was the subject of increased attention of the world community, only at the beginning of the XXI century. Particularly progressive are the states of American space. The research of the human right to the secret of correspondence, enshrined in the legislation of the American states and in the international inter-American legislation, is very relevant today because of the active international policy of the Ukrainian state. Moreover, the results obtained in the future may become useful for the development of the constitutional law of Ukraine.

Condition of processing. An analysis of recent research and publications, which initiated the resolution of the issue raised, indicates on their discreteness and superficiality. Significant achievements are the results of scientific research of A. Burilov [14], A.V. Samotuga [15] and V.O. Seryogina [16], who revealed the issue of ensuring constitutional right to the secret of correspondence in

foreign countries, including in the United States of America (hereafter referred to as the United States) and in Canada. However, it remains not to be analyzed that the legislation of human rights to the secret of correspondence, firstly, in the other vast majority of states of the American space (in the constitutional law of 33 states and dependent territories, administrative units of European states), and secondly, on the international, inter-American level as a whole.

The purpose of the article is a complex research of the constitutional legislation of the right to correspondence secret in the states of the American space at the national and international level and its comparison with the constitutional legislation of Ukraine.

Synopsis of main material. States of American space - states and dependent territories within the North, South America and the Caribbean basin. Independent states are united into the "Organization of American States" (hereinafter - the OAS) [10], and the dependent territories are administrative units of European states such as the Kingdom of Great Britain (hereinafter referred to as Great Britain), the United Kingdom of the Netherlands, the Republic of France and the Kingdom of Denmark.

The constitutional human right to the secret of correspondence (correspondence, telegraph, other correspondence and telephone conversations) is regulated in constitutional law as independent American states, and in the constitutional legislation of dependent territories, but with certain peculiarities and exceptions.

The constitution or other acts of the constitutional legislation of the modern states of the American space were formed under the influence of the colonizer states, the colonies of which they were in the past. Obtaining independence did not significantly change the type of legal system of an American state, and therefore, comparing the provisions of the existing American constitutions (states), we propose to unite them into the following groups: 1) "British"; 2) "American"; 3) "Dutch"; 4) "French"; 5) "Spanish"; 6)

"Danish". So, based on the above classifications, we will analyze each group of American constitutions on the subject of the law securing of secret of human correspondence separately and international, and inter-American legislation in general.

The "British" group of constitutions, developed under the influence of the Great Britain, unites two subgroups, namely: a subgroup of constitutions of independent American states (members of the British Commonwealth of Nations) and a subgroup of constitutions of dependent territories - the overseas territories of the Great Britain, which are not, in fact, members of the OAS.

The first subgroup includes constitutions of the states which ratified the American Convention on Human Rights (Grenada, Dominica, Barbados, Jamaica) and the constitutions of States that have not ratified it (Antigua and Barbuda, the Bahamas, Saint Vincent and the Grenadines, St. Kitts and Nevis, Saint Lucia, Belize and Gaiana).

For example, Article 10 of the Constitution of Grenada (1973, SI No.2155) provides "protection of freedom of expression" ("protection of freedom of expression"), and in its part - citizens are guaranteed "freedom from interference in correspondence or in other means of communication" [5]. The law provides for a possible justified restriction of the said freedom on the basis of the law, but only in the interests of defense, public security, order, public morality or public health, in order to protect the reputation, rights and freedoms of individuals or the private life of the persons concerned in litigation official tribunals, and in order to preserve the authority and independence of Parliament and the courts. Similar constitutional norms, enshrined in Article 10 of the Constitution of Dominica (1978, SI No.1027), Art. 10 of the Constitution of Saint Lucia (1978, SI No.1901) and Article 12 of the Constitution of Antigua and Barbuda (1981, SI No.1106) [5].

Exceptions to the "British" group are constitutional laws of Canada. Canada, as a member of the British Commonwealth of Nations and the OAS,

today, despite the membership in these international organizations, has not ratified the American Convention on Human Rights. The constitutional guarantee of the secret of correspondence, as defined in Part 2, Clause 2 of the Canadian Charter of Rights and Freedoms (1982) as "freedom of thought, belief and expression," is part of the "freedom of the press and other means of communication" (Fr " la liberté des autres moyens de communication") [5].

The result of the research of legally enshrined human right to the secret of correspondence at the constitutional level is to state the fact of the absence of the said norm in the constitutions of the following states: the Bahamas (the Bahamas Act of Independence (1973, p.27)), the Saint Vincent and the Grenadines, the Saint Kitts and Nevis, the Belize (Act of Belize (1981, p. 52), the Guyana (the Act of Independence of Guyana (1966, p.14) and the Act of the Republic of Guyana (1970, p.18), and the Trinidad and Tobago (the Act of Independence (1962 p.54) and the Act on the Republic of Trinidad and Tobago (1976, p.54)) [5].

The second subgroup of the "British" group of constitutions includes constitutions of dependent territories - the overseas territories of the Great Britain, namely: the Virgin Islands, the Falkland Islands, the Cayman Islands, the Turks and Caicos Islands, the Montserrat, the Bermuda and Anguilla.

Guarantees of the secret of human correspondence of the above-mentioned territories are fixed in the following forms: 1) as "freedom", and not "right" (freedom from interference in correspondence or other means of communication "in accordance with Article 23 of the Constitution of the British Virgin Islands (2007, SI No. 1678); 2) as part of the "right to private and family life" ("Protection for private and family life and for privacy of home and other property") (Article 9 of the Constitution of the Falkland Islands (2008, SI No.2846), Article 9 of the Constitution of the Cayman Islands (2009, SI No.1379), and Article 9 of the Constitution of the Turks and Caicos Islands (2011, SI No.1681)).

It is also necessary to separate the legislation of the right to the secret of correspondence in the Constitution of Montserrat (2010, SI No.2474), according to which the guarantee is legally enshrined in the form of "freedom from interference in correspondence or other means of communication" as a component of "freedom of expression views" (Article 9), and as a component of "the right to private and family life" (Article 13) simultaneously [5].

Correspondence-related relationships are not regulated in Bermuda, the legislation of which does not have a relevant rule ((the Act of Bermuda (1967, p.63) and the Act of Anguilla (1980, p.67)) [5].

Consequently, not all independent states and dependent territories of the British group have a constitutional right to the secret of correspondence, including the Bahamas, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Belize and Guyana, and Bermuda.

The next group of constitutions, "American", formed under the influence of US legal policy, which includes, in fact, the US Constitution and constitutional acts of US-dependent territories, namely, the Virgin Islands and Puerto Rico.

In accordance with the Fourth Amendment to the US Constitution (1791), "the right to security of papers" was established (see, for example, the right to protection of correspondence) [4]. According to the amendment, searches are permissible and the slots are not allowed except in the presence of sufficient grounds, which are reflected in the warrant. It is worth noting that the amendment was recently amended in the United States with some restrictions, primarily related to the State's active fight against international terrorism and active intelligence and counter-intelligence activities.

As far as the US Virgin Islands are concerned, they do not have their own constitution, they are governed by US law (§3 of the Bill of Rights on the "Basic Law of the Virgin Islands" (1954)), and therefore they are subject to the Fourth Amendment to the US Constitution (1791) [6].

Unlike the Virgin Islands, Puerto Rico, having its own constitution, agreed by the US Congress in 1952, regulates the problem of ensuring the right to secret of correspondence at its own national level [7]. So, in accordance with the Constitution of Puerto Rico, every person has the right to protection from attacks on its ... private or family life and the right to ... protect its papers, including private letters (Article 8). The right does not have to be violated when searching and removing correspondence (Article 10).

It should also be noted that, at the moment, the United States has not ratified the American Convention on Human Rights, although they are members of the OAS, and, therefore, the right to the secret of human correspondence is fixed exclusively at the national level. In the constitutional law of the United States Virgin Islands and Puerto Rico, the right to the secret of correspondence is guaranteed in part of the right to non-interference in private and family life by analogy with the United States.

A separate group of American constitutions is the "Dutch", formed under the influence of the Kingdom of the Netherlands (hereinafter - the Netherlands) and represented, in fact, by the constitution of its former colony of Suriname and the constitutions of the dependent territories of the Aruba, the Kyurosoa, and the Sint-Marten.

The legislation of the human right to the secret of correspondence in the Suriname takes place only at the international, inter-American level, since Suriname, while ratifying the American Convention on Human Rights, however, at the national level, the guarantee of secret of human correspondence does not find its legislation (Suriname Constitution (1987)) [4].

Concerning the dependent territories, according to Article I.18 of the Constitution of Aruba (1985) [8], Article 8 of the Constitution of Kyurosoa (2010) and Article 8 of the Constitution of Sint-Martin (2010) [9] the secret of correspondence, telephone and telegraphic correspondence is inviolable, except

in cases established by law, and only with the permission of persons designated for this purpose by a national decree.

The provisions of the constitutions are fully consistent with the provisions of Article 13 of the Constitution of the Netherlands (1983) [4]. The right to confidentiality of correspondence is an integral part of the right to privacy and may be violated not only on the basis of a court decision, but also on the basis of the decision of the respective state specially authorized bodies. Consequently, the right to the secret of correspondence in Suriname is confined exclusively to the Inter-American level, and in the dependent Netherlands territories only national, since the latter are not members of the OAS.

Another group of constitutions is "French", formed under the influence of the French Republic. The group comprises two subgroups: 1) a subgroup of the constitutions of the former French colonies - the states that became independent (the Dominican Republic and the Haiti, which ratified the American Convention on Human Rights; 2) a subgroup of the constitutions of the dependent territories of France (the Guadeloupe, the Martinique, the Saint-Barthelemy, the Saint-Martin, the French Guiana, the Saint-Pierre and Miquelon).

Thus, in the first subgroup of the "French" group of constitutions, the right to inviolability of correspondence, telegraph, telephone and cable communications, and other private documents (Article 9 of the Constitution of the Dominican Republic, 1966) is guaranteed, as well as freedom and confidentiality of correspondence and any other forms of communication. These may be limited solely on the basis of a court order (Article 49 of the Constitution of Haiti (1987)) [4].

The second subgroup of the "French" group of constitutional acts is, in fact, the French Constitution (1958), which is used by territories dependent on France (the Guadeloupe, the Martinique, the Saint-Barthélemy, the Saint-Martin, the French Guiana, the Saint-Pierre and Miquelon) [4]. The preamble to the constitution stipulates that the French people declare their commitment to

human rights enshrined in the Declaration of Human Rights and Citizenship (1789). According to Article 11 of the Declaration, free communication of other opinions and beliefs is one of the most valuable human rights, so every citizen can freely speak, write, print, and be responsible for the abuse of this freedom in cases established by law. Thus, the human right to the secret of correspondence is enshrined at the national constitutional and international, inter-American level of such states as the Dominican Republic and Haiti, and only in the nationally level of dependent American territories of France.

Also, a separate group of constitutions of the American states is "Portuguese", formed under the influence of the Republic of Portugal, and represented exclusively by its former colonies, namely: the Uruguay and Brazil, that ratified the American Convention on Human Rights as members of the OAS. Moreover, the guarantees of the secret of human correspondence are enshrined at the national constitutional level. So, documents of individuals and their epistolary telegraph or any other kind of correspondence are intact. Their registration or interception can not be executed in any other way than in accordance with the laws established for the protection of general interests (Article 28 of the Constitution of Uruguay (1967)), and only with the exception of individual cases, on the basis of a judicial order, for the purpose of investigation of a criminal case or trial at any stage of the criminal procedure (§12 the Constitution of Brazil (1988)) [4]. So, the right to the secret of human correspondence according to the Constitutions of Uruguay and Brazil is enshrined at the national, international and inter-American level.

The largest separate group of constitutions of the American states is the "Spanish", formed under the influence of the Kingdom of Spain (former colonies of Spain: the Mexico, the Panama, the Guatemala, the Nicaragua, the Colombia, the Paraguay, the Bolivia, the Argentina, the Costa Rica, the Ecuador, the Chile, the Honduras, the El Salvador, the Peru, who are members of the OAS and ratified the American Convention on Human Rights), and the

Cuba and the Venezuela, which did not ratify the latter, since they are not members of the OAS).

In accordance with the constitutions of the abovementioned American States, the right to secret of correspondence is guaranteed by the state and is inviolable (Article 25 of the Constitution of Mexico (1917), Article 29 of the Constitution of Panama (1972), Article 24 of the Constitution of Guatemala (1985), Article 26 of the Constitution of Nicaragua 1987), Article 15 of the Constitution of Colombia (1991), Article 36 of the Constitution of Paraguay (1992), Article 20 of the Constitution of Bolivia (1994), section 18 of the Constitution of Argentina (1994), Article 24 of the Constitution of Costa Rica (1997) Article 66 of the Constitution of Ecuador (2008), Article 56 of the Constitution of Cuba (1976), Article 48 of the Constitution of Venezuela (1999)) [4]. Violation of these constitutional norms is allowed only on the basis of a decision of the competent authority or on the basis of judicial bodies. Information received without observance of the established procedure, determined by law, can not be evidence in court and is not the basis for the application of any legal consequences.

Exceptions to the "Spanish" group are the constitutions of Chile (1980), Honduras (1982), El Salvador (1982), and Peru (1993), in which the right to the secret of human correspondence is not fixed at all [4].

Thus, the human right to the secret of the correspondence of the "Spanish" group of American states has been fixed at the national and inter-American levels - in the Mexico, the Panama, the Guatemala, the Nicaragua, the Colombia, the Paraguay, the Bolivia, the Argentina, the Costa Rica and the Ecuador; and only at the national level - in Cuba, and Venezuela; only at the inter-American level - in Chile, Honduras, El Salvador and Peru.

Also, a separate group of constitutions of the American states is "Danish", formed under the influence of the Kingdom of Denmark. This group is represented by a single legal act - the Constitution of the Kingdom of Denmark

(1953), which is in force in Greenland (a dependent territory located in North America) [4]. According to Article 72 the constitution stipulates the right to the secret of the correspondence of a person. Searching for housing, arresting and opening and inspection of letters and other documents, as well as breaking the secret of postal and telegraphic mail, telephone conversations, may take place only on the basis of a court order. Consequently, the right to the secret of the correspondence in Greenland as the autonomy of the Kingdom of Denmark is confined to the national level only, however, not at the inter-American level, since Greenland is not part of the OAS.

To compare the experience of Ukraine, which has been an observer of the OAS since 1994, with the American experience of securing the right to correspondence, having analyzed the provisions of the constitutions or constitutional acts of the states of the American space, we arrive at the conclusion that the provisions of Article 31 of the Constitution of Ukraine (1996) are similar to the provisions of the constitutions "French", "Portuguese", "Spanish" and "Danish" groups, with the only exception being that the restriction of the right to inviolability of correspondence is possible not only on the basis of a court decision, but on the basis of the decision of the special competent authority, which is absent in Ukraine.

Inferences. Summarizing the above, we come to the conclusion that the constitutions of the states of the American space can be grouped into six groups, namely: "British", "American", "Dutch", "French", "Spanish" and "Danish". The state guarantee of the secret of human correspondence is its legal form in the form of "freedom from interference with correspondence" (as part of the "freedom of expression") (the "British" group of states and the dependent territories of France); and / or a component of the "right to private and family life" ("American" group); or independent "right to inviolability of correspondence" ("French" group of independent states, "Portuguese", "Spanish" and "Danish group" of states and dependent territories). The provisions of the

constitutional norm of Article 31 of the Constitution of Ukraine are closest to the provisions of the constitutions of the states of the American space of the "French", "Portuguese", "Spanish" and "Danish" groups, but with certain exceptions (the absence of a separate special body empowered to opening and inspection of correspondence).

Citizens of the American states that are members of the OAS and have ratified the American Convention on Human Rights have legitimate reasons to defend their violated right to the secret of correspondence (Article 11 of the Convention) not only within the competence of the courts of their state, but also at the international, inter-American level requesting protection from the Inter-American Court of Human Rights (San Jose, Costa Rica), after having undergone an agreement with the Inter-American Commission on Human Rights (Washington, DC) (the AOS structural unit).

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