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JAPAN'S CONSTITUTION 1947 AS A PATH TO DEMOCRACY

As an aggressor in World War II, Japan was fully disarmed and obligated to establish a democratic government and society. As a part of the obligation, Proclamation of Defining Terms for Japanese Surrender, July 26, 1945, was provisioned by The Potsdam Agreement. According to the Proclamation, the Japanese territory had to be occupied by the Allies until the Japanese Government removes all obstacles to the revival and strengthening of democratic tendencies among the Japanese people [1].

The first thing that needs to be said is that immediately after Japan surrendered, the process of the Japanese transformation into a democratic state has started. General Douglas MacArthur was appointed as the Supreme Commander of the Allied Powers and took control over the occupation of Japan. It's noticeable that this appointment played a significant role in Japan's future. MacArthur employed the already existing government including the national legislative body, the Diet. In addition to it, having opposed to establish American military government and put the emperor Hirohito under a trial, MacArthur set up the basement for further democratic changes.

The first step that should have been taken was the drastic change of the Meiji Constitution (1889), which had numerous flaws that enabled the militarists to take over during the World War II. Moreover, the emperor had concentrated the whole power and was declared as «sacred and inviolable» [2]. Therefore, this provision ensured the complete lack of democracy in the state.

Thus, the new Constitution was composed by the special committee appointed by MacArthur. In fact, it consisted of dozen of army and navy officers and some civilian experts who had the special training in the government and worked on the model of the constitution. One should note here that while composing, they took into account the American Bill of Rights and some progressive policies of The New

Deal by Franklin D. Roosevelt. It's clear that such changes should have been quite efficient as long as they helped out to resolve numerous political and economic issues in the USA.

The new Japanese Constitution went into effect on May 3rd, 1947. First and foremost, it declared the emperor as the symbol of the state (Article 1). Secondly, the Article 9 stated that Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. Thirdly, the Japanese people were guaranteed the fundamental human rights provisioned in Article 11 and the following ones: «The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights» [3].

It's a well-known fact that the adopted constitution was considered a success. It was not abolished after withdrawal of American occupation as it had been predicted. Nevertheless, there have been negotiations relating Article 9 mentioned above. Ultimately, the formal ending of American occupation was accompanied by «U.S.-Japan Security Treaty». Consequently, «this treaty allowed the American military to continue to use important bases in Japan for the defense of the Far East and to intervene in Japan to put down internal disturbances should the Japanese government request such assistance» [4]. However, the further interpretations of the Article have led to the establishment of Self Defense Forces, still proscribing Japan from possessing offensive military.

The other side of the coin, however, is that unlike any other democratic constitutions, The Constitution of Japan has remained unamended since the day it went into effect. This is rare because most other constitutions' «lifespans» are quite short. From one point of view, it may be explained by an arduous process required for an amendment. It's reflected in Article 96 of the Constitution, which states that the proposal for the amendment must be brought in the Diet by the two-thirds of the super-majority and then followed by the ratification in a national referendum. On the other side, it may be caused by the specific enumeration of the human rights and respectively low specificity of institutions. This means that the Constitution profoundly provisioned the human rights rather than political institutions, that's why it has resulted in a such a long «lifespan» of the Constitution.

Indeed, the mentioned aspects are not the only ones that played a significant role in the stability of The Constitution. Hence, Kenneth Mori McElwain remarked that «for most of the postwar period, Japan experienced steady economic growth, social order, and international peace. It has not suffered from severe economic crises or foreign invasions, both of which can produce political turmoil and moments of constitutional reflection. As a result, Japanese citizens have arguably never felt the need to amend the constitution» [5].

In summary, The Constitution of Japan played a fundamental role in creation of a long-lasting democracy. It's the oldest unamended constitution today, which is going to remain the same for a longer period. Its meaning is based in transformation of an authoritarian state into a democracy the main values of which are human rights and dignity. Therefore, it may be inferred that these values must be

considerably embodied in every modern constitution. This is a direct path to a strong democracy that glorifies human rights, freedoms, and other values of the humanity.

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СУДОВА РЕФОРМА В УКРАЇНІ: ІСТОРИЧНІ ТА ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ

Судова реформа є складним політико-правовим явищем, яке можливо розглядати як частину державної політики (зокрема, судово-правової), як частину правової реформи в цілому, як частину соціальної системи. Судова реформа отримує своє підґрунтя з того, що передбачає необхідність прогресивного розвитку судової влади як складової державної влади для забезпечення ефективного здійснення функцій правосуддя. Це складний політико-правовий процес, який означає перебудову наявної організації судової влади на якісно нових засадах з метою реальної реалізації права кожного на справедливий судовий розгляд справи незалежним професійним і неупередженим судом, забезпечення такого рівня правової культури в суспільстві, який би гарантував практичну реалізацію принципу верховенства права в Україні. Судова реформа – це також складний управлінський процес, який відбувається із залученням громадськості, науковців та експертів, вимагає законодавчої та політичної волі. Вона переважно проводиться з урахуванням міжнародних (щодо України також європейських) стандартів, передового зарубіжного досвіду, а також національних традицій і практики. Обов'язковим чином судова реформа потребує вибудовування змісту, цілей і завдань, етапів, строків проведення, організації взаємодії між виконавцями та інші параметри. У результаті судова реформа завершується прийняттям певних політико-правових рішень та законодавчих актів.