

CONSTITUTIONAL PROCESS IN UKRAINE: HISTORICAL RETROSPECT

Steshenko Natalia

PhD of Historical Sciences, Associate Professor, Associate Professor of the Department of Philosophy and Social and Political Sciences, Donbas State Engineering Academy, Ukraine

Steshenko Oleksandr

Teacher of the highest category, teacher-Methodist, Separated Structural Subdivision «Kramatorsk Applied College of Industry, Information Technologies and Business of Donbas State Engineering Academy», Ukraine

Chosta Kostiantyn

Master's degree student of the Faculty of Economics and Management of the Donbas State Engineering Academy, Ukraine

<https://doi.org/10.52340/tuw.2023.01.36.07>

Abstract. *The article examines the process of constitutional changes and their impact on the political system and the international vector of state development. With the acquisition of independence by Ukraine and the formation of its own legal system, there is a need to reform the national constitutional legislation taking into account European and world experience. After all, only the improvement of the Basic Law has a direct impact on systemic changes in the country. The analysis of the constitutional process in Ukraine in the context of its strategic course towards European integration is one of the most important areas of modern research in the field of law, political science and history. The constitutional process is considered as a step-by-step political and legal transformation of constitutional legislation (including changes to the text of the Basic Law), the development of constitutional legal awareness, the construction of a new system of guarantees regarding the practical implementation of constitutional norms for the productive construction of modern Ukrainian constitutionalism in the context of Ukraine's European and Euro-Atlantic aspirations. The basis of constitutional changes is the improvement of legislation at each of the stages of the formation of the Ukrainian constitutional tradition, the spread of positive perception of such changes in society and the formation of a personal need for relevant innovations. The article analyzes the historical aspect of the formation and development of the constitutional process from the first attempts to develop and adopt the Basic Law of Ukraine to the present. It has been established that the effectiveness of constitutional changes in Ukraine, in addition to the presence of the appropriate political will, requires proper legal support, the formation of an effective system of state bodies, and proper coordination of the efforts of all branches of government regarding their implementation. The national constitutional legislation is analyzed taking into account modern European and world experience. Assessment of the role and current state of development of the constitutional process in Ukraine is an important and relevant direction of modern political science research. This approach makes it possible to achieve integrated views and assessments regarding the formation of prerequisites and assessment of existing problems in the process of the formation of civil society and further adaptation of the domestic legal system to European standards.*

Key words: *Constitution, constitutional process, European integration, changes to legislation, reforms.*

Introduction to the problem. The development of Ukraine as a legal, social, democratic state necessitates the development of national constitutional legislation taking into account the European and world experience of modern constitutionalism. It is the constitutional process that is the most effective engine of change in the state, because only the improvement of the Basic Law has a direct impact on systemic changes in the country. The constitutional process is traditionally presented as a step-by-step adoption of the Basic Law or as a process of preparing and amending the current Constitution. Some researchers consider the adoption of the new Constitution to be the final stage of the constitutional process. The authors of the study share the opinion of another part of scientists that the constitutional process in terms of its goals and content is much broader than the procedure for renewing the text of the Constitution as a whole or its individual provisions [1, p. 235].

The analysis of the constitutional process in Ukraine in the context of its strategic course towards EU and NATO membership is an important direction of modern research in the field of history, political science and law. The self-identification of the Ukrainian people as a part of European civilization and the irreversibility of the European integration course chosen by them determine the relevance of this study. Therefore, according to the authors, any modern constitutional reform in Ukraine should be considered through the comparative legal prism of Ukraine's European and Euro-Atlantic aspirations.

Analysis of current research. To date, we have a certain completion of research on the problem in Ukrainian science. O. Bernaziuk , V. Tatsii , Yu. Todyka , Ye. Onatsky studied the specifics of the development of the Ukrainian Constitution. The Basic Law in the context of the European and Euro-Atlantic aspirations of Ukraine was considered in the works of M. Lemets , M. Sarakutsa , M. Cherevka , Ya. Lenger and other researchers. A. Zubrytska, Yu. Shemshuchenko , O. Biloskurka , A. Krusyan and others proposed their own unique methods of classification of the stages of development of the Constitution .

Selection of previously unresolved parts of the general problem. Currently, the role of the constitutional process in the social and political life of the state is growing, and the implemented changes are becoming one of the most important factors in the further democratization of the country. Determining the single vector of development and the goal of the modern constitutional process in Ukraine is one of the most urgent problems of modern political science, which led to the appearance of this study.

The purpose of the work is to determine the main stages of the constitutional process in Ukraine, to analyze the changes to the Basic Law of the State and to characterize its current state through the prism of Euro-Atlantic and European aspirations.

Presentation of the main research material. The constitutional process in Ukraine should be considered as a political and legal step-by-step transformation of constitutional legislation (including changes to the text of the Constitution), the development of constitutional legal awareness, the construction of a new system of guarantees regarding the practical implementation of constitutional norms for the productive construction of modern Ukrainian constitutionalism [1, p. 235].

In the modern classification of Ukrainian constitutionalism, scientists distinguish four main stages:

The 1st stage - from the adoption of the Declaration on State Sovereignty of Ukraine dated July 16, 1990 No. 55-XII until the entry into force of the Constitution of Ukraine dated June 28, 1996 [2, p. 4];

The 2nd stage (1996–2004) is the period of validity of the 1996 Constitution, when most of

its provisions were embodied in the system of constitutional legislation and law enforcement practice (implementation of constitutional justice, development of local self-government, etc.). The most important constitutional initiative of that time was the introduction of the European-style ombudsman institution. On January 15, 1998, the Law of Ukraine "On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights" entered into force. On April 14, 1998, the parliament elected the first Human Rights Commissioner (ombudsman) in the history of the state. Without exaggeration, it can be stated that the institution of the ombudsman is not only a desirable, but also a necessary element of the human rights protection system of the state, a key element in the process of transformation of countries that have embarked on the path of democracy and the rule of law [3, p. 207].

The 3rd stage - from the adoption of the Law of Ukraine dated December 8, 2004 No. 2222-IV "On Amendments to the Constitution of Ukraine" to the implementation of the Law of Ukraine dated February 21, 2014 No. 742-VII "On the Restoration of Certain Provisions of the Constitution of Ukraine". Among the main innovations provided for by the 2004 Law, we should mention the formation of a coalition of parliamentary factions, expansion of the list of grounds for early termination of the powers of people's deputies and early termination of the powers of the Verkhovna Rada of Ukraine by decision of the President of Ukraine, some changes in the procedure for appointing the Prime Minister of Ukraine, cancellation of the right of veto of the President regarding laws on amendments to the Basic Law [4, p. 31].

By the decision of the Constitutional Court of Ukraine dated 30.09.10 No. 20-рп / 2010 Law of Ukraine dated 08.04.04 No. 2222-IV "On Amendments to the Constitution of Ukraine" was declared unconstitutional. Deputies of the Verkhovna Rada of Ukraine were entrusted with the duty of making changes to the Constitution of Ukraine that would correspond to the 1996 edition. In academic circles, the debate continues to this day regarding the restoration by the Constitutional Court of Ukraine of the Constitution of Ukraine of June 28, 1996. Taking into account the conclusion of the European Commission "For democracy through law", the Verkhovna Rada of Ukraine, by its resolution of February 22, 2014, recognized No. 750-18 as the provisions of the Constitution of June 28, 1996, with additions and amendments, are in force on the territory of Ukraine, in accordance with the Decree No. 2222-IV of December 8, 2004, No. 2952-VI of February 1, 2011, and No. 2952-VI of September 19, 2013. 586-VII [4, p. 39].

The 4th stage - from 2013 to the present day. It is connected with the events of the Revolution of Dignity, as a result of which the Euro-integration and Euro-Atlantic vector of the state's development was finally determined, the completion of the formation of Ukrainians as a political nation, as well as the processes and challenges that appeared before Ukraine as a result of the hybrid war, and later, open aggression with side of the Russian Federation.

The final determination of the pro-European foreign policy vector of the state's development necessitated the adaptation of the domestic legal system to European standards. One of the key factors in this context is the reform of the judicial system and the decentralization of the state administration system. The draft law "On Amendments to the Constitution of Ukraine (On Decentralization of Power)" presented by the President of Ukraine (reg. No. 2217 dated 15.07.2015) was approved by the Parliament after a positive conclusion of the Constitutional Court of Ukraine [5, p. 24].

It is also worth noting certain changes in the implementation of the local government reform. Since 2015, in all regions of Ukraine, within the framework of decentralization, united territorial communities (hereinafter - UTGs) began to be created, and in 2017, the Central Election Commission scheduled the first local elections in 250 UTGs. For example, on October 29, 2017,

elections were held in 201 local governments, in another 49 – elections were scheduled for December 24, 2017 [5, p. 23].

In 2017, the Verkhovna Rada adopted a number of legislative acts that strengthened the role of the OTG in the system of local self-government. As of September 1, 2021, within the framework of decentralization, 1,439 OTGs were formed, on the territory of which elections were held in the fall of 2020 [5, p. 25].

One of the important constitutional reforms in the context of Ukraine's approach to the European standards of the human rights system is judicial reform. On September 30, 2016, the Law of Ukraine of June 2, 2016 No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)" came into effect. Since that time, the institution of constitutional complaint was introduced in Ukraine. This became an important component in the mechanism of protection of human and citizen rights and freedoms and was positively evaluated by the European Union. A full-fledged constitutional complaint has earned from the time when the Constitutional Court approved the Regulations, formed boards and senates, which are competent to consider these complaints [6, p. 122].

As a result of the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges" on June 2, 2016, significant changes took place in the judicial system, namely: the transition to a three-tier system with the liquidation of all higher specialized courts; the formation of a new Supreme Court consisting of four courts of cassation; the procedure for appointing judges has been changed; judicial immunity is limited. On November 7, 2016, the Higher Qualification Commission of Judges of Ukraine (hereinafter referred to as the Supreme Court of Ukraine) announced for the first time a competition for the position of a judge of the Supreme Court of Ukraine. According to the new law, in addition to professional judges, lawyers and academics in the field of law could participate in it. The competition lasted nine months, during which the participants had to pass a number of tests: passing four psychological tests; passing anonymous qualification testing; testing of practical skills (writing a draft of a court decision); an interview with members of the Ukrainian Communist Party of Ukraine, which was broadcast online [6, p. 122].

An important component of the open competition according to European standards was the participation of representatives of the Public Integrity Council, who submitted their conclusions on each candidate regarding his professional ethics and integrity. International experts, as well as the ambassadors of the "Big Seven" countries (statement dated November 23, 2017) ultimately recognized that the process of selecting judges of the Supreme Court of Ukraine has become much more transparent and competitive than in previous years, which is a sign of progress in the implementation process of judicial reform [6, p. 124].

Thus, a number of relevant changes are taking place: the reboot of the judiciary through the election of new judges of the Supreme Court of Ukraine, judges of the first instance, the process of comprehensive qualification evaluation of the current judges of Ukraine continues. A necessary prerequisite for the new Supreme Court of Ukraine to begin to effectively perform its functions is the adoption of a number of new procedural codes.

On February 21, 2019, the Law of Ukraine dated February 7, 2019 No. 2680-VIII "On Amendments to the Constitution of Ukraine" entered into force, which, in particular, established the strategic course of the state for full membership in the EU and the North Atlantic Treaty Organization, as well as removed the constitutional provision, which contains a rule on the possibility of using existing military bases on the territory of Ukraine for the temporary stay of foreign military formations in accordance with international treaties that were approved by the

VRU [8, p. 54].

After the events of 2013–2014, a request is being formed in Ukrainian society to change the value system of law according to the European model. The provisions of the Constitution of Ukraine on the irreversibility of Ukraine's European and Euro-Atlantic course are an important message for Ukraine's European partners [9, p. 115].

They should fulfill the role of an additional argument in favor of the determined course of the state. However, it should be noted that the mentioned constitutional provisions do not contain legal norms, but are a declaration of the main political, economic, social and foreign policy intentions of the Ukrainian state.

One of the examples of ensuring the implementation of the norms of domestic legislation in accordance with European traditions is the implementation of the Law of Ukraine of April 9, 2015 No. 317-VIII "On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propaganda of Their Symbols" (Law on decommunization) in terms of changing the names of settlements, streets, etc., which are subject to this law. In particular, on May 19, 2016, the parliament voted to rename the city of Dnipropetrovsk to Dnipro. Despite the fact that the vast majority of toponyms have already been renamed, there remains a whole series of objects, over which disputes arose and appeals to the court were received, and the renaming was suspended for the period of consideration of the case [9, p. 127].

The existing changes to the Constitution of Ukraine, although significantly changing the current legal system of the country, do not solve many problems that await their fastest solution. Among them, in particular, the following can be noted: the completion of the reform of the judicial system; the need for further modernization of the institute of rights and freedoms; constitutional and legal development of civil society in Ukraine; implementation of a new model of interaction between branches of government; creation of effective mechanisms for preventing and countering corruption; reform of local self-government and territorial organization of public power; methodological rethinking of the status of the Autonomous Republic of Crimea, etc. [9, p. 18].

In addition to high hopes for the implementation of the planned reforms, there remain significant risks and obstacles on the way to the real implementation of democratic changes and ensuring the principle of the rule of law in Ukraine. It is important that the ongoing constitutional processes in the state contribute to the return of trust in the Basic Law on the part of citizens [10, p. 24].

In connection with the need to implement the changes that have already been made to the Constitution during the existence of Ukraine as an independent state, at the current stage there is a need for an active revision of the national legal doctrine in general and constitutional law in particular [11].

Conclusions and prospects of further investigations in this direction. The purpose of the modern constitutional process in Ukraine is: systematization of the constitutional normative array; strengthening of constitutional guarantees of human and citizen rights and freedoms and real provision of their protection, first of all, in court proceedings; ensuring the effective operation of state authorities based on a clear division of their functions; improvement of the system of checks and balances; balancing of the entire state mechanism; expansion of constitutional regulation of institutions of direct democracy; optimization of the territorial organization of government in Ukraine; development of local self-government.

At the same time, it is necessary to emphasize that the content of the constitutional process in Ukraine and, accordingly, the content of the Constitution and constitutional legislation must be

consistent with international and European legal acts. One of the most important problems in this context is the full systemic adaptation of the legislation of Ukraine to the legislation of the European Union, because otherwise the integration aspirations of our country will be ineffective.

Assessment of the role and current state of development of the constitutional process in Ukraine is an important and relevant direction of modern political science research. This approach makes it possible to achieve integrated views and assessments regarding the formation of prerequisites and assessment of existing problems in the process of the formation of civil society and further adaptation of the domestic legal system to European standards.

REFERENCES:

1. Крусян А. Р. Модернізація Конституції України: досвід, сучасність та перспективи. *Наукові праці Національного університету «Одеська юридична академія»*. 2012. Т. 11. С. 235–247.
2. Шемшученко Ю. С. Етапи конституційного розвитку в незалежній Україні. *Часопис Київського університету права*. 2015. № 5. С. 4–5.
3. Саракуца М. О. Вплив євроінтеграційних об'єднань на процес конституційного реформування України. *Матеріали Міжнар. наук.-практ. конф., присвяч. 95-річчю з дня народження професора Стрельцова Л. М. (1918–1979)*. Одеса : Астропринт, 2013. С. 207–212.
4. Янішевський С. О., Фісун О. А. Проблеми конституційного транзиту в Україні. К. : НІСД, 2011. 52 с.
5. Писаренко С. Ми пишемо конституцію навіки. *Віче*. 2010. № 3. С. 23–25.
6. Ленгер Я. І., Біровчак А. В. Конституціоналізм в Україні як реалізація ідеї євроінтеграції. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2015. Вип. 32. Т. 1 С. 122–124.
7. Гільбурт А. М. Еволюція конституційного регулювання політичних відносин. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2019. Вип. 56. Т. 1 С. 34–40.
8. Пелих Н. А. Конституція України в умовах сьогодення. *Бюлетень Міністерства юстиції України*. 2012. № 1. С. 51–56.
9. Селіванов А. О. Наукові погляди на сучасні конституційні процеси: про Конституцію, про державу, про права і свободи людини, про правосуддя. К. : Логос, 2014. 129 с.
10. Приходько Х. В. Конституційний процес в Україні: актуальні проблеми становлення та розвитку: автореф. дис. ... д-ра юрид. наук: 12.00.02. Київ, 2012. 39 с.
11. Гомонай В. В. Конституційно-правове забезпечення набуття повноправного членства України в Європейському Союзі та в Організації Північноатлантичного договору. Дис. ... д-ра юрид. наук : 12.00.02. Ужгород, 2020. 404 с. URL: <https://www.uzhnu.edu.ua/uk/infocentre/get/26596>.