Rapport national / National report / Landesbericht / национальный доклад

UKRAINE/ UKRAINE/ UKRAINE/ УКРАИНА/

The Constitutional Court of Ukraine
Конституційний Суд України

Anglais / English / Englisch / английский

Constitutional Court of Ukraine

National Report

XVII Congress of the Conference of European Constitutional Courts

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

I.

1. In the process of carrying out the constitutional control the Constitutional Court of Ukraine applies all available arsenal of constitutional principles such as the separation of powers; the principle of mutual limitation of power; the rule of law; law; the principle of equality and non-discrimination, the principle of proportionality, the principle of reasonableness, the principle of human dignity, and others.

For example, in the Decision No. 6-rp/99 dated 24 June 1999 (the case on funding of courts), the Constitutional Court of Ukraine noted that „the aim of the functional separation of state power into legislative, executive and judicial (Article 6 of the Constitution of Ukraine) is the division of powers between different public authorities and prevention of misappropriation of completeness of state power by one of the branches of government“ (paragraph one of item 2 of the reasoning part).

The Constitution of Ukraine stipulates that the principle of rule of law is recognised and effective in Ukraine; The Constitution of Ukraine has the highest legal force. Laws and regulations shall be adopted on the basis of the Constitution of Ukraine and shall conform to it; provisions of the Constitution of Ukraine are norms of direct action.

The Constitutional Court of Ukraine in its Decision No. 15-rp/2004 dated November 2, 2004 (the case on more lenient penalty) noted that "the rule of law is the supremacy of law in society. The rule of law requires that the state should implement it in law-making and law enforcement activities, including in laws the content of which should be permeated firstly with ideas of social justice, freedom, equality etc. One of the manifestations of the rule of law is that law is not limited by legislation as one of its forms, but includes other social regulators, particularly morality, traditions, customs, etc., which are legitimised by society and caused by historically achieved cultural level of society. All these elements of law are combined with quality that corresponds to the ideology of justice, the idea of law that was largely reflected in the Constitution of Ukraine.

This understanding of law provides no basis for its identification with a legal act, which can sometimes be unfair, include limitation of freedom and equality of individuals. Justice is one of the basic principles of law, and it is crucial in defining law as a regulator of social relations, one of the universal dimensions of law. Justice is usually seen as a characteristic of law, expressed, in particular, in equal legal scale of behaviour and in the proportionality of legal responsibility to a

committed infringement (paragraphs two and three of item 4.1 of the reasoning part).

The principle of equality of all citizens before the law is regarded as the constitutional guarantee of the legal status of a person (first paragraph of item 4.2 of the reasoning part of the Decision of Constitutional Court of Ukraine № 15-rp/2004 dated November 2, 2004 (the case on the more lenient penalty)).

Article 24 of the Constitution guarantees equal constitutional rights and freedoms for every citizen of Ukraine and proclaims equal rights of citizens before the law. In proclaiming the equality of all citizens before the law, Article 24 of the Constitution of Ukraine thus establishes equal subordination of all citizens to the laws of Ukraine. (paragraph one of item 3 of the reasoning part of the Decision of Constitutional Court of Ukraine dated September 28, 2000 № 10-rp/2000 (the case on the privatisation of public housing)).

The principle of equality of all citizens before the law is related to the principle of equality and non-discrimination. For example, in the Decision dated April 18, 2000 № 5-rp/2000 (the case on the age limit), the Constitutional Court of Ukraine stated that „The Verkhovna Rada of Ukraine is authorised to establish qualifications for a person who claims for certain positions, because the Constitution of Ukraine does not prohibit this. These qualification requirements include life experience and social maturity, which can be only acquired at a certain age. The criterion in the legislation establishing the qualification requirements considering age is the appropriateness“ (paragraphs five and six of item 2 of the reasoning part).

In the other Decision dated October 16, 2007 № 8-rp/2007 (the case on the age limit for public servants and for civil servants in bodies of local self-government), the Constitutional Court of Ukraine noted that „age as human lifespan, a period of time that is allocated by certain features is a variable category. Citizens are consistently moving from one age category to another, losing certain rights and privileges established for persons of this age, getting rid of relevant restrictions and acquiring other rights established for that age group. In this case, all people are equal and differ only by age. Therefore, setting age limits can not be considered as a violation of the principle of legal equality of citizens.

The age limit for public servants and for civil servants in bodies of local self-government is actually the retirement age for this category of workers“ (paragraphs three and four, item 3.4 of the reasoning part).

Therefore, „the establishment of the age limit for that service by the legislator is a matter of social or economic feasibility. Particular terms and conditions based on the specific requirements of work, do not limit the right to work and the guarantee of equal opportunities in the choice of profession and field of work“ (paragraph seven of item 3.4 of the reasoning part).

„Thus, equal rights and freedoms of citizens and their equality before the law guaranteed in the first paragraph of Article 24 of the Constitution of Ukraine and the inadmissibility of the privileges or restrictions defined in paragraph two of this article do not prevent the establishment of differences in the legal regulation of

labour for persons who belong to different categories in accordance with types and conditions of activities“ (paragraph five of item 3.3 of the reasoning part).

As regards the application of the principle of proportionality, the Constitutional Court of Ukraine noted that „restricting human and citizen’s rights and freedoms is valid only on the condition that such restriction is proportionate (proportional) and socially necessary“ (paragraph six of item 3.3 of the reasoning part of the Decision of 19 October 2009 № 26-rp/2009).

1.2. The Constitution of Ukraine exists as a legal act which has the highest legal force and introduces fundamental values and principles of the legal system as a criterion of legal force of acts subordinate to it, and other legal acts.

According to Article 4 of the Law of Ukraine „On the Constitutional Court of Ukraine“ dated October 16, 1996 № 422/96-VR (hereinafter referred to as the “Law”), activities of the Court are based on the principles of the rule of law, independence, collegiality, equality of judges, transparency, completeness and comprehensiveness of consideration of cases and validity of its decisions. These principles are manifested in other provisions of the Law, as well as in the provisions of the Rules of Procedure of the Constitutional Court of Ukraine (hereinafter referred to as the “Rules of Procedure”).

The validity of decisions is based particularly on the provisions of the Constitution of Ukraine, decisions of the Constitutional Court of Ukraine, international acts, and the European Court of Human Rights case-law.

2.1. The Constitution of Ukraine establishes the principle of supremacy of the Constitution, the direct effect of norms of the Constitution, equality of rights, inviolability and inalienability of rights and freedoms. The Constitutional Court of Ukraine when considering cases on the protection of human and citizen’s rights is guided by the principles of proportionality, legal certainty and legitimate aim, friendly attitude to international law.

2.2. According to the content of Article 8 of the Constitution of Ukraine, the rule of law is critical to the constitutional order of the state and fundamental for the activity of the Constitutional Court of Ukraine. The Constitutional Court of Ukraine in its Decision dated November 2, 2004 Number 15-rp/2004 (the case on more lenient penalty) found that „the rule of law is the supremacy of law in society. The rule of law requires that the state implements its in law-making and law enforcement activities, including laws the content of which should be firstly permeated with ideas of social justice, freedom, equality, etc.“ (paragraph two of item 4.1 of the reasoning part). The components of the rule of law have also been singled out: fairness, proportionality, legal certainty. For example, in the Decision on the terms of administrative detention dated October 11, 2011 № 10-rp/2011 on the basis of the rule of law, principles of proportionality and legal certainty it was found, in particular, that the administrative detention of an individual without a reasoned court decision can not exceed 72 hours. Thus, the Constitutional Court of Ukraine defended the constitutional right to freedom and personal inviolability.

The principle of supremacy of the Constitution provides for the recognition of unwritten constitutional principles that are connected with the organic characteristics of the rule of law, arising from the logical continuation of the Constitution and reflecting its spirit, especially in the protection of fundamental rights and freedoms.

In its decisions the Constitutional Court of Ukraine noted:

- The right to life and right to respect for dignity. According to the legal opinion of the Court, the aforementioned rights lead to the realisation of other human rights, and therefore can not be narrowed or restricted (Decision of the Constitutional Court of Ukraine dated December 29, 1999 № 11-rp/99 (the case on the death penalty);

- Understanding of nature of the constitutional right to social protection and the corresponding State's obligation to ensure this right; compliance with social guarantees as elements of the said right were recognised by the Court as one of the principles of social legal state (Decision of the Constitutional Court of Ukraine dated July 9, 2007 No. 6-rp/2007 (the case on social guarantees for citizens)).

According to Article 126 of the Basic Law of Ukraine, independence and immunity of judges are guaranteed by the Constitution and laws of Ukraine; influence on judges in any manner is prohibited (paragraphs one and two). Article 149 of the Basic Law of Ukraine emphasises that these guarantees of independence and immunity of judges apply to the judges of the Constitutional Court of Ukraine. In the Decision on the independence of judges as part of their status dated December 1, 2004 № 19-rp/2004 the Court stated that independence of judges is an integral component of their status, the constitutional principle of organisation and functioning of courts and professional activities of judges. In the Decision on the financial support of courts dated March 11, 2010 № 7-rp/2010, the sole body of constitutional jurisdiction in Ukraine indicated that separate financing of each court of general jurisdiction and the Constitutional Court of Ukraine provides conditions for the constitutional guarantees of autonomy and independence while administering justice, since it makes impossible a negative impact on judges through mechanisms of allocation and distribution of funds which they are subject to under the law on the State budget of Ukraine.

2.3. Every decision, opinion of the Constitutional Court of Ukraine is based on the application of the basic constitutional principle. Along with the wording of the principles, the Constitutional Court of Ukraine is also actively implementing international legal principles such as principles expressed by the European Court of Human Rights into the legal system of Ukraine.

For instance, in the Decision dated June 8, 2016 № 3-rp/2016 in the case on termination of payment of assistance at birth the Constitutional Court of Ukraine noted that from the constitutional principles of equality and justice there arises the requirement of certainty, clarity and non-ambiguity of legal provisions as nothing else can ensure its consistent application, precludes unlimitedness of interpretation in law enforcement practice and inevitably leads to arbitrariness (paragraph two of item 5.4 of the reasoning part of the Decision dated September 22, 2005 № 5-

rp/2005). The Constitutional Court of Ukraine proceeds from the fact that the principle of legal certainty does not preclude recognition of some discretion of a public authority in decision-making, but in this case there must be a mechanism to prevent abuse. This mechanism should ensure, on the one hand, the protection of an individual against arbitrary interference into his or her rights and freedoms by public authorities, and on the other hand – a possibility of a person to predict actions of these bodies.

The Constitutional Court of Ukraine finds that discretionary powers of public authorities regarding the termination of payment of assistance at birth should be clearly defined in law. Instead of being clearly defined, the list of grounds for termination of assistance at birth is vague and the fact that social welfare agencies have discretionary powers, the limits of which are not specified in the law may lead to violations of the right to obtain assistance at birth. Legal regulation of grounds for termination of payment of assistance at birth provided for in paragraph seven Article 11.9 of the Law indicates non-compliance with the principle of legal certainty as an element of the of rule of law, guaranteed by Article 8.1 of the Constitution of Ukraine.

3.1. The Constitutional Court of Ukraine quite often leads out implicit principles from already existing ones. For example, the principle of legal certainty is not directly enshrined in domestic legislation, but its importance for the effective legal regulation is confirmed by the jurisprudence of the Constitutional Court of Ukraine. For example in the Decision №5-rp/2005 dated September 22, 2005 the Constitutional Court of Ukraine noted that „from the constitutional principles of equality and justice there arises the requirement of certainty, clarity and non-ambiguity of legal provisions, as nothing else can ensure its uniform application, precludes unlimitedness of interpretation in law enforcement practice and inevitably leads to arbitrariness“ (paragraph two of item 5.4 of the reasoning part).

One of the elements of the rule of law is the principle of legal certainty, which states that restriction of basic human and citizen’s rights and implementation of these restrictions in practice is permissible only on condition that the predictability of the application of legal norms, imposed by such restrictions, will be ensured. In other words, limitation of any right must be based on the criteria that will enable a person to separate lawful behaviour from illegal, foresee legal consequences of one's behaviour (paragraph three of item 3.1 of the reasoning part of the Decision № 17-rp/2010 dated June 29, 2010).

One of the most important conditions of certainty of the relationship between citizen and state, a guarantee of the principle of inviolability of human rights enshrined in Article 21 of the Constitution of Ukraine is the stability of the Constitution, which, among other factors, is largely defined by the legal content of the Basic Law. The existence of too much detailed provision in the Constitution of Ukraine, which should be regulated by the current legislation, may engender frequent amendments to it, what will negatively influence the stability of the Basic Law (paragraph one of item 4 of the reasoning part of the Opinion № 2-v/99 dated June 2, 1999).

According to the Constitution of Ukraine the social orientation of the economy, and state guarantees of securing social rights of citizens, including their rights to social security and adequate standard of living are features of a social state (Articles 46, 48), etc. It obliges the State to properly regulate economic processes, establish and apply fair and effective forms of social redistribution of income to ensure the welfare of all citizens (paragraphs three and four of item 4.1 of the reasoning part of the Decision dated March 17, 2005 № 1-rp/ 2005).

The principle of friendly attitude to international law was established by the Constitutional Court in its Decision № 2rp/2016 and 6 rp/2016. In the latter it is stated that the Constitutional Court of Ukraine takes account of the requirements of international treaties ratified by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by international bodies which jurisdiction has been recognised by Ukraine, including the European Court of Human Rights. Whereas Article 29 of the Constitution of Ukraine corresponds to Article 5 of the Convention, in accordance with the principle of friendly attitude to international law, the practice of interpretation and application of the said article of the Convention by the European Court of Human Rights must be taken into account during the consideration of the case. That is, in the course of time, the Constitutional Court of Ukraine has been developing its jurisprudence on the application of the principles and complementing their content.

3.2. Of course, legal science of Ukraine has contributed to the development of constitutional principles, in particular such scholars as V.B. Averiyanov, V.N. Horshenov, A.P. Zayets, I.D. Slidenko, A.I. Lepeshkin, M.I. Koziubra, A.M. Kolodii, V.V. Kopyeychykov, L.T. Kryvenko, S.L. Lysenkov, V.T. Maliarenko, V.F. Pohorilko, P.M. Rabinovych, Y.M. Todyka, M.D. Savenko, V.M. Shapoval, S.V. Shevchuk, have examined some aspects of the constitutional principles.

There are basic and ordinary principles of the Constitution. Considering the degree of generality two main groups of constitutional principles can be singled out. The first group consists of general principles declared by the Constitution: state sovereignty; democracy; social state; rule of law; unitarianism; humanism; republicanism; popular sovereignty; separation of powers; rule of law; legality; political, economic and ideological diversity of social life etc. These principles are crucial for many constitutional and legal norms, but they do not formulate specific rights and duties themselves and are not always ensured with legal sanctions. General principles require specification through relevant constitutional and legal norms, otherwise they remain constitutional declarations. The second group of constitutional principles includes specific principles that have a clear legal form of expression and are directly applicable in state activities.

The constitutional principles are understood as basic grounds, the original ideas of law enshrined in the constitution that define its essence and basic content.[1]

[1] Лисенков С. Л., Коваль О. А. Принципи права та їх відображення в Конституції України II Науковий вісник Української академії внутрішніх справ.- 1998.- № 2.-С. 20.

Modern Ukrainian scholars (O.G. Kushnirenko and Y.M. Todyka) believe that the basic principles of the Constitution of Ukraine include: democracy; state sovereignty; priority of human and citizen's rights and freedoms; unitarianism; separation of powers; social, democratic, constitutional state; rule of law; political and economic pluralism; legality; freedom of an individual and his/her development; equality of all citizens regardless of ethnicity or other factors; optimal combination of direct and representative democracy. In their view, the principles of the Constitution of Ukraine are crucial fundamentals, the main ideas that enshrine patterns of development of economic, political and social systems of society, the human and citizen's legal status, which should be taken into account when creating the current sectoral legislation. The constitutional principles define the essence of the Constitution, its content and the basis of all branches of domestic law. Principles have a normative character, they are binding for execution.[2]

According to M.D. Savenko, the principles of the Constitution differ from its other norms in terms of content and significance. Fundamental provisions which fix critical areas, rules of functioning of the society, the state, individuals, social values, objectively caused by needs and level of development of a person, civil society are laid down in the principles of the Constitution.[3]

The „principles of the constitution" is the most used notion, because the constitutional principles are directly enshrined in its norms and are applied as norms of direct effect. They can be distinguished from other provisions of the constitution by greater generality, universality and imperativeness.[4]

The constitutional principles may also vary depending on the sphere of their effect. Some of them are applied in the economy (principles of diversity of ownership, free competition, etc.), others – in social sphere (principles of social state, humanism, etc.), in politics (principles of democracy, popular sovereignty, separation of powers, etc.) or in spiritual sphere (principles of ideological diversity, separation of church and state, etc.).

The constitutional principles include, in particular, the following principles: a person may do whatever is not prohibited, and public authorities, bodies of local self-government and their officials – all that is allowed by law; the principle of the independence of judiciary. These principles are derived from other provisions of the Constitution of Ukraine, regarding the first principle – from Article 3 and Chapter II; the second one – from Articles 6 and 19, according to which they must act only on the basis, within the powers and in the manner envisaged by the Constitution and laws of Ukraine; the third one – from the principle of judicial independence while administering justice and their subordination only to the law; guarantee of independence and integrity, the prohibition of influence on judges, establishment of requirements of incompatibility (Articles 126, 127, 129).[5]

[2] Конституційне право України / За ред. Ю. М. Тодики, В. С. Журавського.- К.: Видавничий дім „Ін Юре", 2002.- С. 62.

[3] Савенко М. Д. Принципи Конституці // НАУКОВІ ЗАПИСКИ. Том 53. Юридичні науки, С. 14.

[4] Ibid. p. 14.

[5] Ibid. p. 14.

The principles of the Constitution can be classified into universal, general (principles of national and state sovereignty, exercise of state power, inalienability and inviolability of human and citizen's rights and freedoms, etc.), basic, fundamental, special (principles of the public authorities, the election of local authorities, etc.).

According to the nature of the impact on social relations, the scope of legal regulation and the degree of formal certainty the principles of the Constitution can be divided into two groups: general social (the principles of popular sovereignty, democratic, social and law-based state, exercise of state power on the basis of its division into legislative, executive and judicial, rule of law, supremacy and direct effect of the constitution, the activities of the state and local self-government and their officials, political, ideological, economic diversity, right of ownership, recognition of human life and his/her health, honour and dignity, integrity and security as the highest social value, freedom of opinion and expression, conscience and belief) and special or specially-legal (rule of law, the supreme legal force and direct effect of the Constitution, precise and strict observance of the Constitution, equality before the law and the court, the unity of rights and responsibilities, the presumption of innocence, validity of laws, limitation of retroactivity of laws, justice, judicial independence, judiciary).

According to the purpose in the mechanism of legal regulation, the constitutional principles are divided into substantive and procedural (principles of justice and judiciary).

As to the field of application the principles of the constitution can be classified into universal – common to the whole national legal system, all branches of law (principles of the rule of law, democracy, constitutionality, social and law-based state); inter-sectoral - inherent to two or more branches of law (principles of equality of participants of a trial before the law and the court, adversarial principle, publicity of the trial); principles of constitutional law and its sub-branches (principles of electoral law, electoral process) and the principles of legal institution of the branch (single citizenship, legal status of a person).

According to the functions and subject of legal regulation, the principles of institutions of the Constitution can be singled out: principle of the constitutional order, human and citizen's rights and freedoms, justice, elections, territorial structure etc.[6]

As I.D. Slidenko notes, general constitution shall consist of the two groups of principles. The first group consists of the so-called general or structure-forming principles (the supremacy of the Constitution, separation of powers, etc.). The second group implies instrumental principles, i.e. those that provide opportunities for realisation and reveal the sense of basic principles.[7]

4.1. In its decisions the Constitutional Court of Ukraine refers directly to the application of appropriate methods of interpretation:

[6] Ibid. p. 15.

[7] Сліденко І.Д. Принцип верховенства Конституції: варіабельність деяких наслідків дії // Вісник Центральної виборчої комісії. - 2008. - №1(11). С. 53.

The logical and grammatical analysis of the content of this provision gives grounds to conclude that the legislator has obliged all subjects of cinematography to exercise in a mandatory manner dubbing, scoring or subtitling of foreign films in Ukrainian before their distribution in Ukraine. This is indicated in the phrase "in a mandatory manner", used by the legislator, along with the words "they also". Without the mandatory implementation of the requirements stipulated by Article 14.2 of the Law, the subject of cinematography has no right to obtain permission for the distribution and demonstration of foreign films in Ukraine. Foreign films can also be dubbed or scored or subtitled in minority languages (Decision of the Constitutional Court of Ukraine № 13-rp/2007 dated December 20, 2007).

The Constitutional Court of Ukraine, having applied historical, purpose-oriented, systematic and grammatical methods of interpretation of the Law of Ukraine „On the patenting of certain kinds of entrepreneurial activity“, concluded that this act does not apply to commercial activities and the activities related to everyday services of enterprises and organisations of Ukoopspilka, to military trade and pharmacies that are state-owned, regardless of the scope of such activities (Decision of the Constitutional Court of Ukraine № 16-rp/2000 dated December 21, 2000).

Based on grammatical, logical, historical, purpose-oriented and systematic interpretation of the first paragraph of item 22.3 of Article 22 of the Law and other legal acts on social and legal protection of military servicemen on providing housing to them, the Constitutional Court of Ukraine concluded that the provisions of this paragraph „who are on the housing account according to the place of residence“ refers only to „military servicemen, retired or resigned for health reasons, age, seniourity and due to staff reductions.“ The grammatical analysis of the text of this paragraph implies that „combatants in Afghanistan and military conflicts in foreign countries“ is not a separate specification of the word „military servicemen“, otherwise according to the punctuation of the phrase of law „combatants in Afghanistan and military conflicts in foreign countries“ should be separated not by a comma, as it is done in the law, but by parentheses or dashes (Decision of the Constitutional Court of Ukraine № 11-rp/2002 dated June 13, 2002).

Logical and grammatical interpretation of item 12 of Article 85.1 of the Constitution of Ukraine does not indicate the need for submission by the President of Ukraine in order that the Verkhovna Rada of Ukraine exercises its constitutional powers to dismissal of the Prime Minister of Ukraine, Minister of Defence of Ukraine and Minister of Foreign Affairs of Ukraine, as the phrase „upon the submission of the President of Ukraine“ has no syntactic relation to the phrase „the release of said persons from office, resolving the issue on the resignation of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine“ (Decision of the Constitutional Court of Ukraine №12-rp/2007 dated December 11, 2007).

The analysis of Article 5.8 of the Law on public need to limit the right to a fair trial for creditors of business partnerships, in which bodies of local self-government are owners of corporate rights showed that given the main purpose of

activities of these companies, which is making profit, this restriction is not essential to meet the immediate needs of residents of the territorial community. Thus, restriction of the right to a fair trial can not be considered proportionate as to creditors of commercial partnerships in which bodies of local self-government are owners of corporate rights, so the provision of Article 5.8 of the Law does not apply to the mentioned business partnerships. This conclusion is supported by logical and grammatical interpretation of the contested provision, since it refers exclusively to enterprises, not business partnerships (Decision of the Constitutional Court of Ukraine № 5-rp/2007 dated June 20, 2007).

4.2. Documents of traveaux preparatoires of the Constitution have auxiliary and historical nature during the formation of constitutional principles and are analysed during proceedings.

However, in the Preamble of the Basic Law an important constitutional principle, which has an impact on other provisions of the Constitution of Ukraine, is also formulated. In particular, the Decision № 1-zp dated May 13, 1997 (the case on incompatibility of the deputy's mandate) the Constitutional Court of Ukraine stressed that „the principle of non-retroactivity also applies to the Constitution, which is the Fundamental Law of the state (the Preamble of the Constitution of Ukraine)“ (paragraph three of item 3 of the reasoning part).

5.1. The principles of constitutional law in Ukraine have a number of legal features that allow to understand their legal properties, namely: they are a generalised and concentrated expression of constitutional ideals, i.e. the highest spiritual (ideological) values, the achievement of which is a key strategic objective of the constitutional and legal regulation; they determine the nature and content, orientation and forms of constitutional and legal regulations, in other words, these principles are main social indicators of constitutional and legal regulation.

According to the system of basic institutes of domestic constitutional law, the following principles can be distinguished: the principles of constitutional order foundations in Ukraine; principles of constitutional and legal status of an individual, including the principle of citizenship; principles of the forms of direct democracy; principles of organisation and activities of public authorities; principles of local self-government; principles of constitutional justice, principles of fundamentals of national security and defense of Ukraine and others.

Based on the division of the constitutional law to substantive and procedural, along with material principles of the constitutional law, the constitutional principles of procedural law of Ukraine should be distinguished. The following constitutional principles of procedural law Ukraine can be singled out: the principle of competence; the principle of procedural economy, quorum and majority principle when making collective decisions, the principle of proportionality of voting, the principle of the possibility of challenging the constitutional procedure, the principle of procedural consistency, the principle of imperativeness of procedure, the principle of inadmissibility of procedural analogy and others.

Since the system of constitutional law of Ukraine, in addition to substantive and procedural constitutional law, is represented by other elements, it can be assumed that principles of constitutional law of Ukraine can be also classified into natural and positive principles of constitutional law; principles of subjective and objective constitutional law; principles of national and supranational (for ex. European) constitutional law (Y.M. Bysaha and V.I.Checherskyi).

5.2. In its activity the Constitutional Court of Ukraine is guided by the fundamental principles in connection with specific constitutional law.

5.3. By providing interpretation of the constitutional principles, the Constitutional Court of Ukraine interprets the basic / fundamental principles in conjunction with specific constitutional law as an additional tool. Herewith, the very principles can not be a separate basis for declaring a legal act as non-complying with the Constitution of Ukraine, only together with the relevant constitutional provisions.

5.4. The competence of the Constitutional Court of Ukraine is determined primarily by the Constitution of Ukraine and does not include the authority to carry out relevant examination, consideration of claims of individuals on the protection of their violated rights. These issues may be the subject of consideration only in courts of general jurisdiction (Ruling the Constitutional Court of Ukraine No. 21 dated April 14, 1998 on refusal to initiate constitutional proceedings in the case upon the constitutional appeal of a citizen Seliuk Mykola Romanovych on the official interpretation of Article 2 of the Law of Ukraine „On Social and Legal Protection of Military Servicemen and Their Families“).

6.1. One of the most applicable principle is the principle of equality and justice, for example, Decision of the Constitutional Court of Ukraine № 7-zp dated December 23, 1997 (the case on the Accounting Chamber); Decision of the Constitutional Court of Ukraine № 14-rp/2004 of July 7, 2004 (the case on the age limit of candidates for a position of the head of higher education institution); Decision of the Constitutional Court of Ukraine № 15-rp/2004 dated November 2, 2004 (the case on more lenient penalty); Decision of the Constitutional Court of Ukraine № 2-rp/2005 dated March 24, 2005 (the case on the tax lien); Decision of the Constitutional Court of Ukraine № 5-rp/2005 dated September 22, 2005 (the case on the right of permanent use of land plots); Decision of the Constitutional Court of Ukraine № 8-rp/2005 dated October 11, 2005 (the case on the level of pensions and monthly lifetime monetary allowance); Decision of the Constitutional Court of Ukraine № 5-rp/2007 dated June 20, 2007 (the case on creditors of communal enterprises); Decision of the Constitutional Court of Ukraine № 8-rp/2007 dated October 16, 2007 (the case on the age limit for civil servants and servants in bodies of local self-government); Decision of the Constitutional Court of Ukraine № 9-rp/2009 dated April 28, 2009 (the case on the right to unemployment benefits for those dismissed by agreement of the parties).

Another principle is the principle of separation of state power in Ukraine: Decision of the Constitutional Court of Ukraine № 4-zp dated October 3, 1997 (the case on the entry into force of the Constitution of Ukraine); Decision of the Constitutional Court of Ukraine № 2-rp/2000 dated February 10, 2000 (the case on prices and tariffs for housing and other services); Decision of the Constitutional Court of Ukraine № 6-rp/2004 dated March 16, 2004 (the case of printed periodicals); Decision of the Constitutional Court of Ukraine № 6-rp/2005 dated October 5, 2005 (the case on the exercise of power by the people); Decision of the Constitutional Court of Ukraine № 4-rp/2008 dated April 1, 2008 (the case on the Rules of Procedure of the Verkhovna Rada of Ukraine).

The principle of rule of law was also subject of review and interpretation of the Constitutional Court of Ukraine: the Decision of the Constitutional Court of Ukraine № 15-rp/2004 dated November 2, 2004 (the case on more lenient penalty); the Decision of the Constitutional Court of Ukraine № 4-rp/2008 dated April 1, 2008 (the case on the Rules of Procedure of the Verkhovna Rada of Ukraine); the Decision of the Constitutional Court of Ukraine № 24-rp/2008 dated October 16, 2008 in the case upon the constitutional petition of 48 People's Deputies of Ukraine on the conformity to the Constitution (constitutionality) of the provisions of Articles 1, 2, 4, 6 of the Law of Ukraine „On the transfer of the collection of fine art of Joint Stock Company „Hradobank“ into state ownership“, the Resolution of the Verkhovna Rada of Ukraine „On recognition of the collection of fine arts as national property of Ukraine“.

And the principle of proportionality: the Decision of the Constitutional Court of Ukraine № 26-rp/2009 dated October 19, 2009 (the case on amendments to some legislative acts of Ukraine concerning the election of the President of Ukraine); the Decision № 3-rp/2015 of the Constitutional Court of Ukraine of April 8, 2015 upon the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights on the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Article 171-2 of the Code of Administrative Procedure of Ukraine; the Decision of the Constitutional Court of Ukraine № 13-rp/2001 dated October 10, 2001 (the case on savings of citizens).

6.2. The Constitutional Court of Ukraine in its decisions and opinions formulates approaches to the understanding and application of the constitutional principles. One of these principles became the principle of the rule of law, with all its components. In particular, the principle of legal certainty is an important component of the principle of the rule of law. In the broad sense, the principle of legal certainty is a set of requirements for the organization and functioning of the legal system in order to ensure sustainable human legal status of an individual by improving the processes of law-making and law-enforcement.

The principle of legal certainty is not directly enshrined in national legislation, but its importance for the effective legal regulation is confirmed by the jurisprudence of the Constitutional Court of Ukraine. In the Decision №5-rp/2005 dated September 22, 2005 (the case on permanent use of land plots) the Constitutional Court of Ukraine noted that „from the constitutional principles of

equality and justice there arises the requirement of certainty, clarity and non-ambiguity of legal provision as nothing else can ensure its consistent application, precludes unlimitedness of interpretation in law enforcement practice and inevitably leads to arbitrariness“ (paragraph two of item 5.4 of the reasoning part).

Another component of the principle of the rule of law, which was interpreted by the Constitutional Court of Ukraine, became the principle of rule of a law in the system of legal acts. For example, the Constitutional Court of Ukraine stated that „the Constitution of Ukraine as a legal act with the highest legal force, consolidating the principle of the rule of law (Article 8 of the Constitution of Ukraine) has consistently pursued the principle of the supremacy of a law in the system of legal acts“ (paragraph one of item 4.2 of the reasoning part).

The principle of friendly attitude to international law was established by the Constitutional Court of Ukraine in its Decision № 2-rp/2016 dated June 1, 2016 (the case on judicial control over hospitalisation of incapable persons to a psychiatric institution). It is stated that the Constitutional Court of Ukraine takes account of the requirements of international treaties ratified by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by international bodies, which jurisdiction was recognised by Ukraine, including the European Court of Human Rights. Whereas Article 29 of the Constitution of Ukraine corresponds to Article 5 of the Convention, in accordance with the principle of friendly attitude to international law, the practice of interpretation and application of the said article of the Convention by the European Court of Human Rights must be taken into account during the consideration of this case. (paragraph two of item 2.3 of the reasoning part).

„Article 92.1 of the Constitution of Ukraine establishes the principle of priority (supremacy) of a law in the system of other legal acts, by means of which the legal regulation of the most important social relations is carried out. The list of issues that are to be regulated exclusively by the laws of Ukraine under this norm is mandatory, which means that all decisions related to them should be made in the form of a law.

Thus, the Constitution of Ukraine has established that only the Verkhovna Rada of Ukraine in a relevant law has the right to determine the order of organisation and procedure of activities of the bodies of legislative, executive and judicial branches of power and the status of their officials.

It is logical that and other provisions of the Constitution of Ukraine provide the same legal approaches to the legal mechanism for regulating the organisation and activities of public authorities and their officials (paragraphs three - five of item 4.2 of the reasoning part)“ (the Decision of the Constitutional Court of Ukraine № 4-rp/2008 dated April 1, 2008 (the case on the Rules of Procedure of the Verkhovna Rada of Ukraine)).

II.

1.1. Under the provisions of Article 8.2 of the Constitution of Ukraine, the Constitution of Ukraine has the highest legal force. Laws and other legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it.

Therefore, the constitutional principles have a certain advantage over other provisions of the Basic Law.

1.2. Given that Ukraine is not a member of the European Union no correlation can be set between the constitutional provisions and the norms of the European Union.

Under the provisions of Article 9 of the Constitution of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. Conclusion of international treaties that contravene the Constitution of Ukraine is possible only after appropriate amendments to the Constitution of Ukraine.

In most cases, correlation between the constitutional principles and international law lies in the understanding of the legal nature of sovereignty, which is expressed in a recognised principle in international law „par super parem potestatem non habet".

Yet, „despite the Constitution of Ukraine does not formally regulate the validity of international customary law in domestic law, a number of laws and regulations, and the actual practice of law enforcement give grounds to believe that the generally recognized principles and norms of international law can be de facto applied in the internal legal order of the country and therefore they constitute an integral part of its domestic law."[8]

Professor P.F. Martynenko considered that „the Constitution of Ukraine proceeds from the establishment of the organic unity („monism") of international and domestic law of Ukraine. As a result, the constitutional system and legal order in Ukraine for the first time have acquired the character of „openness" as to direct effect of international law, including international treaties ratified by the Verkhovna Rada of Ukraine, in the internal relations of Ukraine." [9] M.D. Savenko is convinced that „the provisions of Article 9 of the Constitution of Ukraine regarding the effect of international law in the state shows the independence of international and national law systems, in other words, that this rule comes from the theory of dualism in their relationship in order to be applied in Ukraine, international treaties, norms, principles and other elements of international law

[8] Денисов В. Н., Мельник А. Я. Розвиток правових засад та механізмів верховенства міжнародного права у внутрішньому праві України // Взаємодія міжнародного права з внутрішнім правом України / за ред. В. Н. Денисова. – К. : Юстініан, 2006. – (672 с.) С.39.

[9] Мартиненко П. Місце і роль Конвенції про захист прав і основних свобод людини 1950 року в конституційно-правовому механізмі України // Вісник Конституційного Суду України. — 2002. — № 2. С. 64.

should be implemented in domestic law in accordance with the established procedure.“ [10]

Some Ukrainian scholars believe that the effective ratified international treaties take place after the Constitution of Ukraine in the hierarchy of legal acts and their rules have precedence over the rules of national laws and other acts of domestic legislation. In particular, V. Yevintov in his comments on Article 9 of the Constitution of Ukraine has concluded that „1) the rules of international agreements that entered into Ukrainian law by a ratification law, acquire the status of national law and are subject to relevant application. Direct application of the agreements in question is not excluded if the lawmaker has not made a special transformation of these norms into domestic legislation; 2) in case of conflict between provisions of the ratified treaty and national law, the former prevail over national laws and are subject to priority application; 3) it is prohibited to bring treaties into the law of Ukraine and, accordingly, to apply them if they contradict the Constitution“ [11].

Quite often, the assertion on dominance of the rules of international treaties over the national law in Ukraine is inconsistent and not convincing, despite the considerable number of supporters.[12] [13] [14]

As regards the relationship between international and national law, for instance, V. Mytsyk notes the following: „despite the fact that more and more scholars are inclined to set the priority of international law over domestic regulations, most constitutional acts of European countries do not provide such a priority.“ [15].

Thus, the constitutional principles in Ukraine have the advantage over other provisions of the Basic Law. A variety of scientific views on the correlation between international and national law in Ukraine demonstrates lack of regulation of this issue at the constitutional level. As for the primacy of universally recognised principles and norms of international law, it is declared at the legislative level only in the foreign policy activities (Article 2 of the Law of Ukraine „On the principles of domestic and foreign policy“dated July 1, 2010 № 2411-VI).

2. The Constitutional Court of Ukraine does not establish the hierarchy of constitutional principles.

---

[10] Савенко М. Роль міжнародно-правових актів у діяльності Конституційного Суду України із захисту прав і свобод людини // Вісник Конституційного Суду України. — 2001. — № 2. С. 75.

[11] Євінтов В. Пряме застосування міжнародних стандартів прав людини: (Коментар до ст. 9 Конституції України) // Український часопис прав людини. — 1998. — № 1. С. 27.

[12] Паліюк В. П. Застосування судами України Конвенції про захист прав людини та основних свобод. — К.: Фенікс, 2004. С. 6.

[13] Шевчук С. Європейська конвенція про захист прав людини та основних свобод: практика застосування та принципи тлумачення в контексті сучасного українського праворозуміння // Практика Європейського суду з прав людини. Рішення. Коментарі. — 1999. — № 2. – С. 230-231.

[14] Козюбра М. Місце Європейської конвенції з прав людини у правовій системі України // Досвід застосування Європейської конвенції з прав людини в судочинстві України та Польщі: Матеріали науково-практичної конференції/ Упоряд. О. П. Корнієнко. — К.: Вид-во „А.П.Н.“, 2006. С. 8.

[15] Буткевич В. Г., Мицик В. В., Задорожній О. В. Міжнародне право. Основи теорії: Підручник / За ред. В. Г. Буткевича. — К. : Либідь, 2002. С. 282.

The Constitutional Court of Ukraine in its case-law has repeatedly referred to the singling out of principles in the Constitution of Ukraine. In particular, in the Decision № 4-rp/2008 dated April 1, 2008 (the case on the Rules of Procedure of Verkhovna Rada of Ukraine) the Constitutional Court of Ukraine stated that „the division of state power is a structural differentiation of the three equivalent major state functions: legislative, executive and judicial. It reflects the functional determination of each state authorities, stipulates not only the separation of their powers, but also their interaction, the system of mutual checks and balances aimed at ensuring their cooperation as the only state power. The principle of separation of state power makes sense only on the condition, when all public authorities operate within a common legal framework. This means that the legislative, executive and judicial power exercise their authority within the frame Constitution and according to the laws of Ukraine (Article 6.2 of the Constitution of Ukraine). State authorities and local self-governments and their officials are obliged to act only on the basis, within the powers and in the manner envisaged by the Constitution and laws of Ukraine (Article 19.2 of the Constitution of Ukraine). Strict compliance with the Constitution and laws of Ukraine by legislative, executive and judicial powers ensures the implementation of the principle of separation of powers and is the key to their unity, an important prerequisite for stability, maintenance of civil peace and harmony in the country“ (paragraphs two and four of item 4.1. of the reasoning part).

In other decisions it was stated that „the principle of separation of state power in Ukraine (Article 6 of the Constitution of Ukraine) means that the legislative, executive and judicial power exercise their authority within the Constitution of Ukraine and according to the laws of Ukraine“ (first sentence of item 2 of the reasoning part of the Decision of the Constitutional Court of Ukraine № 2-rp/2000 dated February 10, 2000 (the case on prices and tariffs for housing and other services).

„The Constitution of Ukraine has established that the state power in Ukraine is carried out on the principle of its separation into legislative, executive and judicial branches, and the realisation of this principle of separation of powers is ensured first and foremost by regulations, according to which public authorities exercise their authority within the Constitution of Ukraine and according to laws of Ukraine (Article 6)“ (paragraph two of item 6 of the reasoning part of the Decision of the Constitutional Court of Ukraine №6-rp/2004 dated March 16, 2004 (the case on printed periodicals).

The Constitutional Court of Ukraine has repeatedly referred to the principles of a law-based state: the principle of the rule of law, the principle of priority of human and citizen’s rights over other values in the state, the principle of real guarantee of citizen’s rights and freedoms, the principle of legality, and the principle of trust of an individual to the state.

In particular, the Decision №15-rp/2004 dated November 2, 2004 (the case on more lenient penalty) The Constitutional Court of Ukraine stated that „according to Article 8.1 of the Constitution of Ukraine the principle of rule of law is recognised and effective in Ukraine. The rule of law is supremacy of law in

society. The rule of law requires from the state its implementation in law-making and law enforcement activities, including the laws that should be first of all permeated with ideas of social justice, freedom, equality and etc. One of the manifestations of the rule of law is that the law is not limited by legislation as one of its forms, but includes other social regulators, including morality, traditions, customs, etc., which are legitimised by society and are historically caused and achieved by cultural level of society. All these elements of law are united by quality that corresponds to the ideology of justice, the idea of law, which was largely reflected in the Constitution of Ukraine. This understanding of the law provides no basis for its identification with the statue law, which can sometimes be unfair, including a possibility of restriction of the freedom and equality of individuals. Justice is one of the basic principles of law and is crucial in defining it as a regulator of social relations, one of the human rights dimensions of law. Typically, justice is seen as a feature of law, expressed in particular, in an equal legal scale of behaviour and proportionality of legal responsibility for an infringement. In the area of realisation of law, justice appears particularly in the equality of all before the law, compliance of crime with the punishment, purposes of the legislator and means, elected to achieve them.

Another manifestation of justice is compliance of a penalty with a crime committed; the category of justice provides that the punishment for a crime must be proportionate to the crime. Fair application of the law is primarily non-discrimination and impartiality. This means not only that the statutory crime and punishment meet each other, but also that the punishment should have a fair correlation with the severity and circumstances of the offence and the offender. Adequacy of punishment to the severity of the crime stems from the principle of the law-based state, the essence of constitutional human and citizen's rights and freedoms, including the right to freedom which can not be limited, except as provided by the Constitution of Ukraine" (paragraphs two – five of item 4.1 of the reasoning part).

„The rule of law, as one of the basic principles of a democratic society, involves judicial control of interference with the right of everyone to freedom. The court, while administering justice on the base of the rule of law provides protection of human and citizen's rights and freedoms, rights and legitimate interests of legal persons, interests of society and the state guaranteed by the Constitution and laws of Ukraine" (paragraphs fourteen, fifteen of item 4.1 of the reasoning part).

In another Decision (Decision № 8-rp/2005 dated October 11, 2005 (the case on the level of pensions and monthly lifetime monetary allowance) the Constitutional Court of Ukraine stressed that „In Ukraine as a social, legal state the policy is aimed at creating conditions that provide a decent standard of living, free and comprehensive development of man as the highest social value, his life and health, honour and dignity. The promotion and observance of social standards enshrined in the legal acts is a constitutional duty of the state. The activity of law-making and law enforcement bodies has to be implemented based on the principles of justice, humanism, supremacy and direct effect of the Constitution of Ukraine and the authority should be exercised within the limits set by the Fundamental Law

of Ukraine and according to the laws“ (paragraph two of item 4 of the reasoning part).

The Constitutional Court of Ukraine referred to the principle of priority of human and civil rights over other values in the state. Thus, in the Decision № 2-rp/2008 dated January 29, 2008 (the case on the dismissal of People's Deputies of Ukraine from other positions in case of compatibility) the Constitutional Court of Ukraine stated that „in terms of the constitutional petition the priority of natural human rights should be considered as one of the fundamental principles of the Constitution of Ukraine, according to which the Verkhovna Rada of Ukraine, as a legislative body, shall adopt legal acts in full compliance with this approach„ (item 6.1 of the reasoning part). In addition, the Constitutional Court of Ukraine stressed that „in circumstances where there is a competition of rights and freedoms in the implementation of their protection, the principle of priority should be applied“ (first sentence, paragraph one of item 6.1.3 of the reasoning part).

In the Decision № 2-rp/2005 dated March 24, 2005 (the case on the right of a tax lien), the Constitutional Court of Ukraine noted that „one of the most important conditions of certainty of the relationship between an individual and the state is the principle of the inviolability of human rights and freedoms, enshrined in Articles 3 and 21 of the Constitution of Ukraine. Recognising the human being as the highest social value, the Fundamental Law of Ukraine stipulates the rights and freedoms, guarantees and ensures their protection, including the protection from the abuse of the state, its bodies and officials. These rights and freedoms determine the extent of possible behaviour of man and citizen, particularly as an owner, reflect certain limits of these rights and the opportunity to enjoy benefits to meet their interests“ (paragraph one of item 4.2 of the reasoning part).

The principle of real guaranteeing of rights and freedoms of citizens has become one of the key principles in determining whether the more lenient penalty should be imposed (The Decision № 15-rp/2004 dated November 2, 2004 (the case of more lenient penalty). The Constitutional Court of Ukraine stated that „the law-based state, considering the sentence as a corrective and preventive tool, should use not excessive, but only necessary measures and those due to the purpose. Limitation of constitutional rights of the accused person must comply with the principle of proportionality: the interests on ensuring the protection of human and citizen's rights and freedoms, property, public order and safety, etc. may justify legal restrictions on rights and freedoms only if the adequacy of socially conditioned goals exists“ (sentences one and two, paragraph four, item 4.2 of the reasoning part).

Another principle, related to the principle of security of real rights and freedoms of citizens, was the principle of respect and inviolability of human rights and freedoms. Thus, in the Decision № 5-rp/2005 dated September 22, 2005 (the case on the right of permanent use of land plots) the Constitutional Court of Ukraine stressed that „the abolition of constitutional rights and freedoms is their official (legal or actual) liquidation. The narrowing of the content and scope of the rights and freedoms has its limits. In the traditional sense of defining the concept of

human rights, content are conditions and means that constitute human capacities necessary to meet the needs of his existence and development are of basic significance. The scope of human rights is their intrinsic quality, expressed in quantitative indicators of human capabilities, which are reflected by corresponding rights that are not uniform and universal. There is a generally recognised rule, according to which the essence of the content of a fundamental right can never be violated“ (paragraph four of item 5.2 of the reasoning part).

„Ukraine as a democratic and law-based state enshrined the principle of respect and inviolability of human rights and freedoms, the establishment and guaranteeing which is the main duty of the state. The constitutional principle of the law-based state requires from it to refrain from limiting universally recognised human and citizen's rights and freedoms, including property rights (Articles 1, 3.1, 21, 22 and 64 of the Constitution of Ukraine)“ (paragraph one, item 5.3 of the reasoning part).

The constitutional principle of equality has frequently been the subject-matter of consideration of the Constitutional Court of Ukraine. For example, in the Decision No.14-rp/2004 dated July 7, 2004 (the case on the age limit of candidates for a position of the head of higher education institution), the Constitutional Court of Ukraine stated that „the constitutional principle of equality does not preclude the possibility for the legislator in regulating labour relations to establish certain differences in the legal status of persons who belong to different categories according to the type and terms of activities, including the introduction of special rules concerning the grounds and conditions for the replacement of certain positions, if it is required by the nature of the professional activities.

However, the goal of establishing specific differences (requirements) in the legal status of workers should be substantial, and the differences (requirements), that pursue such goal must comply with constitutional provisions, be objectively justified, reasonable and fair. Otherwise, the establishment of restrictions on the positions would be a discrimination“ (paragraphs four and seven, item 4.1 of the reasoning part).

In another Decision (№ 15-rp/2004 dated November 2, 2004 (the case on more lenient penalty) the Constitutional Court of Ukraine has developed the principle of equality, stating that „the principle of equality of all citizens before the law is a constitutional guarantee of the legal status of a person that applies in particular to the infliction of punishment. Bringing the person who committed a crime to responsibility does not only mean equality of all persons before the law, but also provides for the establishment of common principles of the application of such responsibility in the law“ (sentences two and three, paragraph one, item 4.2. of the reasoning part).

The Decisions № 6-rp/2007 dated July 9, 2007 (the case on social guarantees for citizens) and № 9-rp/2009 dated April 28, 2009 (the case on the right to unemployment benefits for those dismissed by agreement of the parties) laid down the foundations for the application of the principle of trust of individual to the state. In particular, the Constitutional Court of Ukraine stated that „confirming and ensuring the rights and freedoms of citizens, the state established certain social

benefits, compensations and guarantees by special laws of Ukraine as a part of the constitutional right to social protection and legal means to exercise this right, and therefore pursuant to Articles 6.2, 19.2 and 68.1 of the Constitution of Ukraine, they are binding and have to be abided equally by state authorities, local self-governments and their officials. Non-fulfillment of state social commitments with regard to individual citizens puts citizens into unequal conditions, undermines the principle of trust f individual to the state, that naturally leads to violation of the principles of social, law-based state" (paragraph one of item 3.2. of the reasoning part of the Decision № 6-rp/2007 dated July 9, 2007 (the case on social guarantees for citizens) and stressed that „when adopting new laws or amending existing laws the content and scope of existing rights and freedoms shall not be diminished (Article 22.3 of the Constitution of Ukraine), otherwise the status of a person in society will be deteriorating because of the restriction of rights and freedoms enshrined in the laws of Ukraine. Non-fulfillment of the social obligation by the state as to certain categories of people leads to the violation of the principles of social, law-based state, puts citizens into unequal conditions, undermines the credibility of the state by the people" (sentences two and three, paragraph five, item 5 of the reasoning part of Decision № 9-rp/2009 dated April 28, 2009 (the case on the right to unemployment benefits for those dismissed by agreement of the parties).

Herewith the jurisprudence of the Constitutional Court of Ukraine indicates that it does not give the status for some overriding constitutional principles in comparison to the other provisions of the Basic Law.

3.1 As V.M. Shapoval states, „The Constitution belongs to a certain category of legal acts - laws. However, unlike the latter it has a higher rigidity - the special nature of the adoption and amendment" [16].

According to the procedure of amending, the Constitution of Ukraine is close to rigid constitutions, which is confirmed by the following factors:

1) The Constitution of Ukraine shall not be amended if the amendments foresee the abolition or restriction of the rights and freedoms of man and citizen, or if they are aimed at liquidation of independence or violation of the territorial integrity of Ukraine (Article 157 of the Constitution of Ukraine);

2) The Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency (Article 157 of the Constitution of Ukraine);

3) A draft law on introducing amendments to the Constitution of Ukraine is considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine on the conformity of the draft law with the requirements of Articles 157 and 158 of this Constitution (Article 159 of the Constitution of Ukraine);

[16] Шаповал В.В. Конституція України як нормативно-правовий акт / В.В. Шаповал // Право України. – 1997. – № 10. – С. 2.

4) A draft law on introducing amendments to the Constitution of Ukraine, except to Section I „General Principles“, Chapter III „Elections. Referendum“, and Chapter XIII „Introducing Amendments to the Constitution of Ukraine“, may be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no fewer People's Deputies of Ukraine than one-third of the constitutional composition of the Verkhovna Rada of Ukraine (Article 154 of the Constitution of Ukraine);

5) A draft law on introducing amendments to the Constitution of Ukraine, with the exception of Chapter I — „General Principles“, Chapter III — „Elections. Referendum“, and Chapter XIII — „Introducing Amendments to the Constitution of Ukraine“, previously adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine, is deemed to be adopted, if at the next regular session of the Verkhovna Rada of Ukraine, no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favour thereof. (Article 155 of the Constitution of Ukraine);

6) A draft law on introducing amendments to Chapter I, Chapter III and Chapter XIII is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine, and on the condition that it is adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine, and is approved by an All-Ukrainian referendum designated by the President of Ukraine.(Article 156.1 of the Constitution of Ukraine);

7) The repeat submission of a draft law on introducing amendments to Chapters I, III and XIII of this Constitution on one and the same issue is possible only to the Verkhovna Rada of Ukraine of the next convocation. (Article 156.2 of the Constitution of Ukraine);

8) The draft law on introducing amendments to the Constitution of Ukraine, considered by the Verkhovna Rada of Ukraine and not adopted, may be submitted to the Verkhovna Rada of Ukraine no sooner than one year from the day of the adoption of the decision on this draft law (Article 158.1 of the Constitution of Ukraine);

9) Within the term of its authority, the Verkhovna Rada of Ukraine shall not amend twice the same provisions of the Constitution (Article 158.2 of the Constitution of Ukraine).

Thus, the Constitution of Ukraine according to the complexity of the amendment procedure is quite tough.

The constitutional procedure involves general and special (institutional) order of their submission. General procedure stipulates that the relevant draft law may be submitted to the Verkhovna Rada of Ukraine only by the subjects, stipulated in the Basic Law of the state: the President of Ukraine or at least one third of the deputies of the constitutional composition of the Parliament of Ukraine (Article 154). Then under the defined procedure of consideration it is adopted at the session hall.

Special (institutional) procedure involves constitutional amendments to certain sections of the Constitution of Ukraine, in particular Section I „General

Principles“, III „Elections. Referendum“, XIII „Introducing Amendments to the Constitution of Ukraine.“ The corresponding draft law is submitted to the Parliament by the President of Ukraine or by People's Deputies, but their number should be at least two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine. This draft law after the positive opinion of the Constitutional Court of Ukraine is adopted by no less than two thirds of the constitutional composition of the parliament and is approved by a national referendum, initiated by the President of Ukraine (Article 156.1 of the Constitution of Ukraine).

Ukrainian scholars have determined two stages of enactment of amendments to the Constitution of Ukraine[17]: the first stage - the discussion and preliminary approval of the draft law by a majority of People's Deputies of the Verkhovna Rada: In accordance with the Constitution and the Law „On the Rules of Procedure of the Verkhovna Rada of Ukraine“ (hereinafter referred to as "Rules of Procedure") a draft law to amend the Constitution of Ukraine is introduced to the Parliament, the issue is put on the agenda and discussions at a plenary session, prior approval is performed and the appeal to the Constitutional Court is adopted to receive an opinion on the conformity of the draft law to Articles 157 and 158 of the Constitution of Ukraine (Articles 155 and 159 of the Constitution, Article 146 of the Rules of Procedure). Article 146.4 of the Rules of Procedure provides that a draft law on amending the Constitution of Ukraine is put on the agenda of the Verkhovna Rada of Ukraine for its direction with an appeal of the Parliament to the Constitutional Court of Ukraine, and also a prior approval of the draft law in the session hall (Article 155 of the Constitution of Ukraine). While making the decision to put a bill on the agenda, the Parliament decides several issues, namely: preparation of the decision to adopt a resolution on the appeal to the Constitutional Court of Ukraine on this draft law; its publication for a public discussion; sending the document for a scientific, legal or other expertise, scientific research or study before adoption of the resolution on appeal to the Constitutional Court of Ukraine by the Verkhovna Rada of Ukraine; postponement of the adoption of the resolution on such an appeal before certain circumstances appear or before performing certain actions (paragraphs 1-4, Article 146.7 of the Rules of Procedure). In case of introduction of the draft law on amendments to the Constitution of Ukraine to the agenda for its in-depth study, the Verkhovna Rada of Ukraine may decide to create a special commission to continue work on it (Article 146.9 of the Rules of Procedure).

At its session the Verkhovna Rada of Ukraine considers the publication of the draft law on amendments to the Constitution of Ukraine. In case of non-adoption of the decision the draft law shall be published in the official publications only to inform the citizens, and it can also be published in other media. Herewith all its drafters or its structural parts, and initiator of submission of the draft law to the Verkhovna Rada of Ukraine should be specified (Article 146.8 of the Rules of Procedure);

[17] Теліпко В. Механізм ухвалення Конституції України: у площині пошуку оптимального варіанта// Віче. – 2008. – № 20. – С. 12–16.

the second stage – adoption of the final decision (the Law on Amendments to the Constitution of Ukraine, supported by two thirds of the constitutional composition of the Parliament)[18]: availability of the opinion of the Constitutional Court of Ukraine on compliance or non-compliance of the draft law with the requirements of Articles 157 and 158 of the Constitution of Ukraine is binding on the Parliament while consideration of the draft. This preliminary check is a safeguard for violation of Articles 157 and 158 of the Constitution of Ukraine that is provided for in Article 159 of the Constitution of Ukraine and in Article 147.10 of the Rules of Procedure.

The Opinion of the Constitutional Court of Ukraine may be positive or the one, indicating the violations of Articles 157 and 158 of the Constitution of Ukraine in the draft law. It should be given immediately to MPs, and forwarded to the President of Ukraine. And the chairman reports about obtaining the opinion at the nearest plenary session of the Verkhovna Rada of Ukraine. If the draft law is generally recognised as being in compliance with Articles 157 and 158 of the Constitution of Ukraine, and considering its provisions the sole body of constitutional jurisdiction expressed no reservations as to its provisions, the consideration of the preliminary approval of the draft law on amendments to the Constitution of Ukraine in accordance with Article 155 of the Constitution of Ukraine is put on the agenda of the plenary session of the Verkhovna Rada of Ukraine no sooner than 7 days after MPs receive the conclusion of the main committee of parliament on the Opinion of the Constitutional Court of Ukraine or other period specified by parliamentarians. The main committee and other committees of the Parliament, charged with further work on the draft law, prepare conclusions on it (Article 147.11 of the Rules of Procedure). And according to Article 149.5 of the Rules of Procedure the Verkhovna Rada of Ukraine may consider and make a decision on preliminary approval of the draft law.

If the Constitutional Court of Ukraine recognises that the draft law or some of its provisions do not comply with Articles 157 and 158 of the Constitution of Ukraine, as well as expresses its reservations on the provisions of the draft law, the Verkhovna Rada of Ukraine decides on further work on the draft law. In particular, it instructs the main and other committees of Parliament to finalise the draft with account of the Opinion of the Constitutional Court of Ukraine to discuss each position and amendments to the document in accordance with the procedure of consideration of bills in the second reading (Articles 119, 120, 151.1 of the Rules of Procedure).

The decision on taking into account the proposals and amendments to the draft law on amendments to the Constitution of Ukraine is adopted by a majority of votes of the People's Deputies of the constitutional composition of the parliament (Article 155 of the Constitution). After its adoption the legislative body adopts a resolution on the appeal of the Verkhovna Rada of Ukraine to the Constitutional Court of Ukraine to provide its opinion on compliance of the revised text of the

[18] Коментар до конституційних змін: науково-популярне видання / редкол. В. Ф. Опришко та ін. – К.: Ін-т законодавства Верховної Ради України, 1996.–378 с. (С. 340).

draft law on amendments to the Constitution of Ukraine with Articles 157 and 158 (Articles 151.2, 151.3 of the Rules of Procedure) and sends this appeal to the Constitutional Court of Ukraine.

Prior approval and further consideration of the draft law shall be put on the agenda of the first session of the newly elected Verkhovna Rada of Ukraine without a vote (Article 149.2 of the Rules of Procedure).

At the same time, the newly elected Verkhovna Rada of Ukraine can not consider the draft law on amendments to the Constitution of Ukraine, which according to Article 155 of the Constitution of Ukraine was previously approved by the parliament of the previous convocation, but was not adopted as a law. In this case, procedural rules establish that such a draft law is considered as not adopted by the Verkhovna Rada of Ukraine of the previous convocation. According to the requirement of Article 158.1 of the Constitution of Ukraine the draft law on amendments to the Constitution of Ukraine, which was considered by the Verkhovna Rada of Ukraine and was not adopted as a law, may be submitted to parliament no sooner than one year from the day the decision on this draft law was made (Article 149.3 of the Rules of Procedure).

Sometimes the third stage of amending the Constitution of Ukraine is indicated[19]: consideration of the draft law on amendments to the Constitution of Ukraine at the next session of Parliament and the adoption of the law by the Verkhovna Rada of Ukraine. This can happen only if at least two thirds of the People's Deputies of the Verkhovna Rada would vote for such draft (Article 155 of the Constitution). The Parliament may pass a draft under Article 155 of the Constitution of Ukraine, only under the following conditions: when pursuant to the Opinion of the Constitutional Court of Ukraine it meets the requirements of Articles 157 and 158 of the Constitution of Ukraine; the Constitutional Court of Ukraine has not expressed reservations as to it; under Article 155 of the Constitution of Ukraine it was previously approved by the Verkhovna Rada of Ukraine of the same convocation at the previous regular or extraordinary session of the legislative body (Article 149.6 of the Rules of Procedure).

Provisions of the Rules of Procedure indicate the need for compliance with certain requirements of the procedure if simultaneous comprehensive amendments are made to all sections of the Constitution of Ukraine. Article 143.6 of the Rules of Procedure states that if comprehensive amendments are made to both sections of the Constitution of Ukraine, mentioned in Article 155 (Sections II, IV-XII, XIV, XV), and to the sections referred to in Article 156.1 (Sections I, III, XIII), the initiator of such amendments submits two separate drafts related to each other to the Verkhovna Rada of Ukraine; such draft laws should also include provisions which provide combination and coordination in time of their entry into force and according to which, in case of rejection by the Verkhovna Rada of Ukraine or non-approval of one of them by national referendum, the second one, associated with it, shall not take effect too.

[19] Конституція України: науково-практичний коментар/редкол.: В. Я. Тацій (гол. редкол.), О. В. Петришин (відп. секретар), Ю. Г. Барабаш та ін. – 2-ге вид., перероб. і доп. – Х.: Право, 2011. – 1128 с. (С. 1076-1077.)

According to his powers, the President of Ukraine has to sign the Law on Amendments to the Constitution of Ukraine, adopted by at least two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine. However, Section XIII of the Constitution of Ukraine does not establish a deadline of signing the law by the head of state.

In the Decision No,4-zp dated October 3, 1997 (the case on entry into force of the Constitution of Ukraine) the Constitutional Court of Ukraine stressed that „the Constitution of Ukraine as the Fundamental Law of the state as to its legal nature is an act of constituent power that belongs to the people.

Constituent power in relation to the so-called established powers is primary: it is in the Constitution of Ukraine that the principle of separation of state power into legislative, executive and judicial is recognised (Article 6.1) and defines the principles of organization of the established powers, including legislative" (paragraphs two, three of item 2 of the reasoning part).

3.2.The Constitution of Ukraine does not explicitly establish the existence of constant („eternal") regulations.

3.3. The current Constitution of Ukraine was adopted by the Verkhovna Rada of Ukraine on June 28, 1996. In the Decision No.4-zp dated October 3, 1997 (the case on the entry into force of the Constitution of Ukraine), the Constitutional Court of Ukraine stressed that „the adoption of the Constitution of Ukraine by the Verkhovna Rada of Ukraine meant that in this case the constituent power was exercised by the Parliament" (sentence two, paragraph three, item 2 of the reasoning part).

The procedure of amendments (changes) to the Basic Law is enshrined in the very Constitution of Ukraine and elaborated in the legislation adopted pursuant to the Constitution of Ukraine.

3.4. As of today, no changes have been made to the constitutional principles.

4.1. The Constitutional Court of Ukraine is actively involved in the procedure of amending the Constitution of Ukraine. During its 20-year activity the Constitutional Court of Ukraine has adopted 28 opinions in cases upon appeals of the Verkhovna Rada of Ukraine to provide an opinion on compliance of the draft law on amending the Constitution of Ukraine.

The Constitutional Court of Ukraine is entitled to control the compliance with all the conditions on amending the Constitution of Ukraine by the Parliament, since under Article 159 of the Basic Law the draft law on amendments may be considered only if the positive opinion of the Constitutional Court is avalable. Thus, the opinion of the Constitutional Court on amending the Constitution of Ukraine is required by the constitutionally established procedure of constitutional amendments and is an element of protection of the constitutional order, which can be changed only at a constitutional referendum.

The appeal to the Constitutional Court of Ukraine to check the conformity of the draft law on amending the Constitution of Ukraine with Articles 157 and 158 of the Constitution of Ukraine is binding for the Verkhovna Rada of Ukraine (Articles 147 and 159.1 of the Constitution of Ukraine). During the implementation of preventive (prior) constitutional control over compliance of the draft laws amending the Constitution of Ukraine with Articles 157 and 158 of the Constitution of Ukraine, the Constitutional Court of Ukraine ensures the constitutionality of their implementation by the Verkhovna Rada of Ukraine, which is one of the main guarantees of the stability of the Constitution of Ukraine. Failure to do so by the Verkhovna Rada of Ukraine is a violation of the foundations of the constitutional order: state power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power (Article 6 of the Constitution of Ukraine). The inclusion of Article 159 into Section XIII of the Constitution of Ukraine took place in order to avoid amending the Constitution of Ukraine in breach of Articles 157 and 158 of the Basic Law of the state. It follows that, in accordance with Article 159 of the Constitution of Ukraine not only a draft law, submitted to the Verkhovna Rada of Ukraine in the order established in Articles 154, 155 and 156 of the Constitution of Ukraine, but also all possible amendments made to it during its consideration at the plenary session of the Verkhovna Rada of Ukraine are subject to mandatory examination for compliance with Articles 157 and 158 of the Constitution[20].

The substantive grounds for the Constitutional Court of Ukraine to make a conclusion on the impossibility of amending the Constitution are the following: the amendments foresee the abolition or restriction of human and citizens' rights and freedoms; their orientation toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine. The objective reasons include conditions of martial law or state of emergency; existence of facts on consideration of the same draft law during the previous year, previous changes made to the particular provision of the Constitution of Ukraine by the Parliament of the same convocation.

4.2. Exercise of constitutional control by the Constitutional Court over laws amending the Constitution of Ukraine is variously estimated by Ukrainian scholars and lawyers. In particular, there is a widespread idea that the law on amendments to the Constitution as an act of constituent power after its entry into force becomes an integral part of it and therefore can not be reviewed by the Constitutional Court of Ukraine. According to S.P. Holovatyi, „act / law on amending the Constitution becomes a subject of constitutional review under the so-called preliminary examination only at the initial stage of the process of amending the Constitution, when it still has the status of a draft law, and only in terms of its compliance with two articles of the Constitution of Ukraine (157 and 158).“[21]

[20] Decision of the Constitutional Court of Ukraine No.8-rp/98 dated June 9, 1998 (the case on amendments to the Constitution of Ukraine).

[21] Головатий С. Верховенство права: український досвід.: У 3-х кн. – Книга третя. – К., 2006. – С. 1277–1747, 1445.

Some constitutional reform issues have been researched in the works of Y. Barabash, M.Koziubra, A. Selivanov, I. Slidenko, P. Stetsiuk, M. Tepliuk, V. Fedorenko, V. Shapoval and others.

5. Draft laws on amending the Constitution of Ukraine are considered by the Verkhovna Rada of Ukraine only if the Constitutional Court of Ukraine has adopted an opinion on their compliance with Articles 157 and 158 of the Constitution of Ukraine. The current law „On Constitutional Court of Ukraine" does not contain any rules that would regulate and specify the constitutional provisions. Moreover, even in the list of powers of the Constitutional Court of Ukraine, that are included into Article 13 of the Law, there is no such function. The Rules of Procedure of the Constitutional Court of Ukraine also do not regulate the procedure and the peculiarities of review of this category of cases, and the regulation is limited only by reference to § 54.5 where the type of act, adopted by the Court in this case is established (opinion). Currently, the only piece of legislation that develops the constitutional provisions on constitutional checks of draft laws amending the Basic Law is the Law of Ukraine „On the Rules of Procedure of the Verkhovna Rada of Ukraine" (hereinafter referred to as the Rules of Procedure).

The subject that can appeal to the Constitutional Court of Ukraine to challenge the constitutionality of amendments (changes) introduced to the Basic Law is the Verkhovna rada of Ukraine.

During its existence, the Constitutional Court of Ukraine has adopted 28 Opinions within the execution of the function of constitutional control over laws amending the Constitution of Ukraine, although only three of them were finally adopted by the Parliament.

Under Article 150 of the Rules of Procedure, if in the opinion of the Constitutional Court of Ukraine the draft law on amendments to the Constitution of Ukraine as a whole, or its individual provisions are recognised as such that do not comply with Articles 157 and 158 of the Constitution of Ukraine, and if the Constitutional Court of Ukraine has reservations about provisions of the draft law, the Verkhovna Rada of Ukraine decides on further work on it, determining a deadline for relevant subjects to submit proposals, amendments to the draft law, the term of processing proposals, amendments, a date of considering the proposals, amendments etc.

As H. Pryhodko states, „the participation of the Constitutional Court of Ukraine in the process of amending the Constitution of Ukraine is one of the priority constitutional procedures. The legal position of the Constitutional Court of Ukraine, expressed in its opinions, have conceptual and legal significance and provide law-limiting, law-ensuring, law-programmatic, law-modernisational, law-stabilising, law-ideological, law-informational, law-socialising and other functions

as to regulation of constitutional jurisdictional and other law enforcement activities“ [22].

6.1. The Constitution of Ukraine does not contain reservations regarding the exercise of constitutional review of the law on amendments to the Constitution of Ukraine after its adoption by the Verkhovna Rada of Ukraine by the Constitutional Court of Ukraine.

As it was once noted by M.Tsvik, „The Constitutional Court is both objectively a lever to balance the state power system and a protector against any legislative distortion of the fundamental rules and principles established by the Constitution“[23]. The same opinions were expressed by V. Tatsii and Y. Todyka. According to them „in the process of ensuring the supremacy of the constitution one of the leading roles belongs to the Constitutional Court“ [24].

6.2. According to the legal position of the Constitutional Court of Ukraine expressed in the Decision № 13-rp/2008 dated June 26, 2008 (the case on the powers of the Constitutional Court of Ukraine), „lack of judicial control over the procedure of its consideration and approval, as defined in Section XIII of the Constitution of Ukraine, may lead to the restriction or cancellation of human and citizen's rights and freedoms, liquidation of independence or violation of the territorial integrity of Ukraine or change of the constitutional system in a way which was not provided by the Fundamental Law of Ukraine. In order to prevent this, the Constitutional Court of Ukraine has to carry out subsequent constitutional control over the law on amendments to the Constitution of Ukraine after its entry into force“ [25].

6.3. Under the provisions of § 54.5 of the Rules of Procedure of the Constitutional Court of Ukraine the Constitutional Court of Ukraine provides opinions on the review of cases regarding the conformity of a draft law on amending the Constitution of Ukraine with Articles 157 and 158 of this Constitution. The opinion includes: declaration that a draft law complies with Articles 157 and 158 of the Constitution of Ukraine; The Opinion is binding, final and cannot be appealed; The Opinion is published in the „Bulletin of the Constitutional Court of Ukraine“ and other official publications of Ukraine.

If the opinion indicates inconsistency of a draft law on amendments to the Constitution of Ukraine with Articles 157 and 158 of the Constitution of Ukraine, the Constitutional Court of Ukraine recognises this draft law as such that does not

[22] Приходько Х. Роль правових позицій Конституційного Суду України у становленні та розвитку доктрини конституційного процесу // Вісник Конституційного Суду України. – 2015. – № 2. – С. 43–54 (С. 49.).

[23] Цвік М. В. Про офіційне тлумачення законів України // Вісник Академії правових наук України. – 1997. – №4. – С.51-52.

[24] Тацій В., Тодика Ю. Межі тлумачення Конституційним Судом Конституції і законів України // Вісник Конституційного суду України. – 2002. – №2. – С.60-61

[25] Decision of the Constitutional Court of Ukraine No.13-rp/2008 dated June 26, 2008 (the case on the powers of the Constitutional Court of Ukraine).

meet the requirements of Article 157 or 158 of the Constitution of Ukraine; provisions of the draft law that meet the requirements of Articles 157 and 158 of the Constitution of Ukraine, may be adopted at the next regular session of the Verkhovna Rada of Ukraine by not less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine and on condition that they will be pre-approved by a majority of the constitutional composition of the Verkhovna Rada of Ukraine, taking into account the Opinion of the Constitutional Court of Ukraine.

7. Given the constitutional reforms a trend towards strengthening the constitutional authorities is not observed, including strengthening the authority of the Constitutional Court of Ukraine to check the amendments (changes) to the Basic Law.