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**POLITICAL AND LEGAL FRAMEWORK MECHANISM TO
IMPROVE THE CONSTITUTION OF UKRAINE**

Summary

The article is devoted to the modern stage of the constitutional process in Ukraine. Based on the trends of thinking, new achievements of constitutional law native science, latest analysis of its sources, the article attempts to discover the essence of political reform in the practical implementation of the Constitution of Ukraine.

Key words: Constitution of Ukraine, political and legal reform, constitutional process, the legal procedure, the system power.

Formulation of the problem. Prospects for further development of Ukraine is impossible without rethinking the provisions of the current Constitution to form a radically new approach to the development of constitutional democracy, the rule of law and social harmony developed civil society.

After the adoption of the Law of Ukraine "On Amendments to the Constitution of Ukraine" dated 8 December 2004 constitutional reform is particularly relevant in view of the political, economic, financial, legal uncertainty, which is not the first day is among the most pressing issues on the agenda of political life.

A particular objective of the reform is to change the ideology of the state, which should take priority person. But nothing will change society for the better until the government begins to live by the law, respect the law, to put human rights above all

not in declarations and in daily life. And this power should first learn to respect the Constitution.

From the moment when the Constitution was adopted until now Ukraine has appeared in a lot of projects of constitutional reform. Projects varied, but the process of amending the Constitution delayed in time, because none of the political actors did not want to give up powers.

The modern approach to the development of the Constitution requires that it was developed with the participation of the people of the country. And the basis of modern constitutional doctrine should be on three initial ideas: first, the modernization of the system of checks and balances between branches of government; secondly, to ensure the unity of the executive power, while maintaining its formation by Parliament on the results of national elections; thirdly, the development of democracy in Ukraine. The authorities are challenged to transform post-Soviet Ukraine civilized European state and modern Constitution must conform.

Analysis of recent research and publications. The issue of reforming the mechanism of improving the Constitution of Ukraine became the subject of research in the works of many local scholars and practitioners such as: Evgrafov P.B., Tasiy V.Ya, Rudic P.A., Telipko V., Shemshuchenko Yu., R. Knyazevich, A. Strizhak, and many other jurists.

The article is an analysis of the major trends and prospects for constitutional reform to create modern social and political conditions of national systems of constitutionalism.

This suggests the need to study the mechanism of improving the main stages of the Constitution of Ukraine, analysis of key decisions and documents that determined the content of these phases, highlight the main contradictions of the process of reformation and recommendation of theoretical and practical plan for overcoming them.

Presenting main material. Political and legal reform for several years is one of the central problems of the political life of the country and has attracted considerable public attention. The current state of the state of life some scientists linked with

imperfect constitutional reform of 2004. Assuming thus that this reform has led to an imbalance in the division of powers of the legislative and executive branches of government. Others believe that most of today's politicians and political parties suffer from legal nihilism. The lack of legal culture as a whole Ukrainian nation and its individual representatives played a key role in stirring up political unrest in the country. But in terms of law-the Constitution of the country must be constructed in such a way as to minimize the possibility of manipulating its principles in any political conflict.

The process of reforming the system of power in Ukraine began just after it gained independence and continues today. Prior to the adoption of the Constitution of Ukraine in 1996 this process was rather finding a model of governance that would most naturally replace the previous one. Despite the fact that the Constitution has been praised Venice Commission "Democracy through Law", in the practical implementation of the Basic Law created many problems arising from the incompleteness of the formation of the legal basis of the political system of Ukraine. After all, it was actually founded not balance, and conflict the executive and the legislature. The government controlled virtually no parliament, and the parliament did not feel responsibility for the actions of the government. Therefore, this model of power could not hold Ukrainian society. And in 1997 the first attempt was made constitutional reform.

The 1996 Constitution was recognized as one of the most democratic in Europe. The provisions of Sections I "General Principles" and the second "The rights, freedoms and duties of man and citizen" undoubtedly meet international standards in the field of constitutional law. However, most other sections of the Basic Law provisions which governed the formation, powers and organization of work of public authorities still retain vestiges of Soviet-komandno-administrative system. Especially it concerns such an important component of civil society, as local government, which, although it is recognized and guaranteed under Article 7 of the Constitution of Ukraine, in practice remains entirely dependent on the "mercy" of the central government [1, 22].

Discussions on political reform was first taken to the level of draft laws on amendments and additions to the Constitution of Ukraine in 1998, when the parliament brought two bills, the first of which is proposed to abolish sections regulating the activities of the President and the Constitutional Court of Ukraine [2] and the second - in fact return to the Soviet model of government by empowering parliament, the introduction of the Presidium of the Supreme Rada of Ukraine and the abolition of the post of President. [3] These bills were not supported by Parliament.

In 2000 a popular initiative held a national referendum on amending the Constitution in the organization of the political system [4, p. 68]. Although the people of Ukraine gave an affirmative answer to all four questions asked, no law on amendments to the Constitution of Ukraine on the results of the referendum is not accepted [5]. Parliament approved only one item: the President of Ukraine received the right to prematurely dissolve the parliament.

After the parliamentary elections in Ukraine in 2002 existing model of presidential-parliamentary form of government exhausted, faced the need for modern form of government. Ukraine needed a more perfect management tool for national development. Ukrainian society and tried to find it.

The main task of amending the Constitution of Ukraine was the creation of an effective, politically responsible government, branches of which would not conflict or compete with each other and competing for the best deal to the public.

Only in August 2002, after a public utterance of the President of Ukraine the idea of reform, the reform began gaining powerful momentum. December 26, 2002 established the Interim Commission of the Verkhovna Rada elaboration of draft laws amending the Constitution of Ukraine.

During 2003-2004 the initiative of President of Ukraine held a "national discussion" of the draft amendments to the Constitution. This laid the foundation for the formation of the current structure of power in Ukraine, which was fixed in December 2004, when the confrontation in the society has reached a critical point. Political consensus led to the emergence of 8 December 2004 Parliament adopted amendments to the Constitution of Ukraine [6, p. 44] that the Bill provided that the

breach of Article 159 of the Constitution was not considered by the Constitutional Court of Ukraine for compliance with the requirements of Articles 157 and 158.

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Ukrainian practice of constitutional norms repeatedly became a basis for initiating amendments to the Constitution of Ukraine. The Verkhovna Rada of Ukraine, from 28 June 1996 until now there were more than a dozen draft laws of Ukraine on amendments to the Constitution of Ukraine. Some laws provide for only spot improvement of certain provisions of the Basic Law, while some of them were intended to radically reform the state.

As a result, the Constitution of Ukraine was amended laws of Ukraine on December 8, 2004 № 2222-IV, dated 1 February 2011 № 2952-VI, on September 19, 2013 № 586-VII, on February 21, 2014 № 742-VII . We consider it necessary to pay attention to the meaning of these laws.

Law of Ukraine "On Amendments to the Constitution of Ukraine" dated December 8, 2004 № 2222-IV introduced changes to the organization of state authorities in Ukraine and been introduced to the form of government elements parliamentary-presidential republic. Specifically, changes to the Constitution of Ukraine provided a significant strengthening of the powers and role of the Verkhovna Rada of Ukraine in a system of "checks and balances". Along with the introduction of parliamentary method of forming the Cabinet of Ministers of Ukraine was offered some other instruments functioning of the state as a parliamentary-presidential republic. However, these changes did not have a complex character, which was the subject of criticism by domestic and international experts. In particular, the Venice Commission from 10 - 11 June 2005 was made a number of comments to the substantial nature of the new Constitution of Ukraine.

It became apparent that the constitutional reform of 2004 created an inefficient power structure in the country. A disadvantage of this system is the reform of the procedure for appointment and subordination members of the Cabinet of Ministers of Ukraine. Because of the new order and foreign policy Ukraine are in the hands of the various branches of government.

However, these changes were wrongfully declared unconstitutional decision of the Constitutional Court of Ukraine of September 30, 2010 № 20-rp / 2010. Constitutional Court of Ukraine decided to restore the previous edition of the Constitution of Ukraine is in the wording of its decision June 28, 1996 [7].

In the previous result we can say that from the time of partial entry into force of amendments to the Constitution of Ukraine - in January 2006 - the mechanism of state power was significantly unbalanced - there was a lot of unnecessary complications in the relations of higher authorities, permanently emerging political conflicts, there have been misunderstandings inside of government, numerous violations of the Constitution by the higher echelons of power.

This situation forced the President of Ukraine as guarantor of the Constitution, Decree of December 27, 2007 № 1294/2007 «On the National Constitutional Council" and the Decree of the President of Ukraine from February 18, 2008 № 139/2008 «On the composition of the National Constitutional Council" to establish in Ukraine National Constitutional Council, whose main task was to prepare proposals on the concept of systemic renovation of constitutional regulations and general provisions of the new Constitution of Ukraine and ensuring public discussion.

The President of Ukraine has repeatedly stressed that the National Constitutional Council shall prepare a draft constitution, which will be focused not on meeting short-term interests of a person or political force, and promote more effective cooperation of the authorities to fulfill obligations to the citizens.

But on Oct. 22, 2009 Parliament rejected the conclusion referral to the Constitutional Court of Ukraine of a new Constitution of Ukraine, the accumulated National Constitutional Council [8] and the council stopped its activities.

Authorities in Ukraine have repeatedly demonstrated that their political interests prepared to ignore the provisions of the Constitution. 30 September 2010 restored the Constitution of Ukraine the effect of 1996 on the basis of the Constitutional Court in the case of the compliance procedure of amending the Constitution of Ukraine of 08 December 2004.

The decision to restore the wording of the Constitution of Ukraine on 28 June 1996, adopted by the Constitutional Court of Ukraine, was the subject of a rather rigid and professional critics, both domestic and international experts. Thus, the inadmissibility of this method of amending the Constitution of Ukraine was drawn to the attention of the European Commission "For Democracy through Law" (Venice Commission) in its Opinion from 17 - 18 December 2010 (CDL-AD (2010) 044). Moreover, the Venice Commission referred to the violation of the legitimacy of the government in terms of restoring the wording of the Constitution of Ukraine on 28 June 1996.

The Basic Law states need serious and needs further improvement. That is why it is worth mentioning Law of Ukraine "On Amendments to the Constitution of Ukraine on holding the next elections of people's deputies of Ukraine, President of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, town and city mayors" on February 1, 2011 № 2952-VI . The law was intended to resolve inconsistencies in connection with the adoption of the decision of the Constitutional Court of Ukraine of September 30, 2010 № 20-rp / 2010.

February 21, 2011 by the Decree of President of Ukraine the Scientific Expert Group, chaired by the first President of Ukraine Leonid Kravchuk, who had "work out proposals for a mechanism and creation of the Constitutional Assembly, and to analyze the concept of reforming the Constitution of Ukraine" [9]. Concept of formation and organization of the Constitutional Assembly was approved by 25 January 2012 [10]. With a view to working out proposals for changes to the Constitution of Ukraine, guided by Article 102 and under paragraph 28 of Article 106 of the Constitution of Ukraine, President of Ukraine Decree of 17.05.2012 № 328/2012 creates a Constitutional Assembly as a special subsidiary body under the President of Ukraine [11].

Based on international experience of special bodies of constituent power and modern political and legal processes in Ukraine, and we have proposed to conduct constitutional reform through a special body of constituent power - Ukraine Constitutional Assembly.

However, at the beginning of the implementation of this plan seemed quite problematic. Therefore, this domestic constitutional process has a long evolutionary nature. By the way, it drew attention to the Parliamentary Assembly of the Council of Europe recommended that Ukraine carry out intensive preparations for constitutional reform and complete it without waiting for the results of parliamentary elections in October 2012 [12]. The activity of the Constitutional Assembly was suspended the decree of the President of Ukraine "On liquidation of the Constitutional Assembly" from 01.12.2014, the № 901/2014.

The next step in the mechanism of improving the Constitution of Ukraine was adopted by the Verkhovna Rada the Law of Ukraine "On Amendments to Article 98 of the Constitution of Ukraine" dated September 19, 2013 № 586-VII, and was directed solely at reforming the constitutional and legal status of the Accounting Chamber.

The key points of constitutional transformation include the adoption by the Ukrainian Parliament of the Law of Ukraine "On the recovery of certain provisions of the Constitution of Ukraine" dated 21 February 2014, de facto turning Ukraine into effect of the Constitution amended on 8 December 2004 № 742-VII [13].

This socio-political processes in Ukraine in November 2013 - February 2014 led to the adoption of the Law of Ukraine "On the recovery of certain provisions of the Constitution of Ukraine." The Law restored the effect of certain provisions of the Constitution of Ukraine amended the laws of Ukraine on December 8, 2004 № 2222-IV, dated 1 February 2011 № 2952-VI, on September 19, 2013 № 586-VII. Thus, the Constitution of Ukraine today operates with regard to amendments of 08 December 2004, which provides for functioning in Ukraine a parliamentary-presidential form of government.

Back to the constitution of 2004 the process of improving the constitutional norms not followed. For the further transformation of the Basic Law of the Supreme Council, in accordance with of Article 89 of the Constitution of Ukraine, adopts a decree "On establishment of the Interim Commission of the Verkhovna Rada of Ukraine on the preparation of the draft law on amendments to the Constitution of Ukraine" dated

03.04.2014, № 849-VII (hereinafter FAC). It also provides for the establishment of paragraph 1 of section II of the coalition agreement.

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FAC "prepare a coordinated bill on amendments to the Constitution of Ukraine with the conclusions of the Venice Commission." This corresponds to the objectives of Article 85 of the Regulations of the Verkhovna Rada of Ukraine. But after switching to the Coalition Agreement Program of the Cabinet of Ministers in 2015, these provisions were also part of the government program.

April 29, 2014 in the Parliament held open parliamentary session in the form of public hearings devoted to amending the Constitution of Ukraine, which should provide the foundation for democratic change in our country. Amendments to the Constitution should cover three blocks: finding the balance of power at the central level to improve parliamentary-presidential form of government; decentralization and giving real powers of local governments; reform of the judicial system. Because, and it has become apparent without empowering local governments can not build strong regions and a strong country. Accordingly, the main purpose of amending the Constitution should not be a struggle for power and distribution of power to overcome and destruction of political and economic corruption that arises monopoly on power and resources znayty balance of power between the President, Government and Parliament.

By Decree number 119/2015 of 3 March 2015 the President of Ukraine, according to paragraph 28 of Article 106 of the Basic Law, the Constitutional Commission created as a special subsidiary body under the President. The main objective of the Commission was "Amendments to the Constitution already in 2015, the main content of which should be a decentralization of power" [14].

Thus, the Commission established for the purpose of working out agreed proposals for amendments to the Constitution of Ukraine with the involvement of representatives of various political parties, the public, the best professionals and most respected politicians of national and international organizations, and promote social and political consensus for improving the constitutional regulation of social relations in Ukraine.

In general, if to assess the status and direction of the parliamentary and presidential commissions, it should be noted that the status and subject of these committees is the same: training agreed amendments to the Constitution of Ukraine. Meanwhile, the process is slow, contradictory, inconsistently. One manifestation of this is the initiation of parallel constitutional parliamentary and presidential commissions that almost lead to one thing - braking constitutional reform in terms of territorial organization, local government, local authorities [15].

In Venice Commission are concerned that the constitutional reform in Ukraine is too slow while amendments to the Constitution of decentralization should enter into force by the end of this year.

According to the Constitution, to be held next autumn local elections. Until then changes regarding territorial organization and local authorities would not, the elections will be held under the modern territorial organization of local government reform and vidterminovuyetsya at least five years. Also in the constitutional reform of decentralization is part of Minsk agreements to be implemented this year.

Conclusions. The problem of effective functioning of the public administration in Ukraine can not be solved without fundamental reform of the constitutional-legal status and principles of local self-government and executive authorities in regions and districts. The need for empowerment of local governments baseline (village, city) and giving them the appropriate financial and material resources is extremely important and economically feasible. On the importance of this issue repeatedly drawn the attention of representatives of civil society, local governments and their associations, local scholars and practitioners constitutionalists.

Local authorities should receive a number of additional powers to the organization to properly address local issues that can be addressed most effectively is at an appropriate level.

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