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Certain components of the constitutionalization content in the legislative procedure in Ukraine

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■ **Abstract.** The relevance of this study is conditioned upon the need to investigate individual elements of the constitutionalization content in the legislative procedure. The purpose of this study was to develop doctrinal approaches for determining the constitutionalization content in the legislative procedure. This study uses a complex of scientific methods: dialectical, modelling, and correlation, historical legal, comparative legal, formal logical, and other methods. The author's definition of the term "constitutionalization of the legislative procedure" was formed. It was proved that constitutional legal awareness in the psychological aspect forms the vector of activity of subjects of public relations. This study focuses on the importance of the constitutional legal consciousness and legal culture of the legislator – the only representative body of Ukraine, the most numerous subject of legislative initiative. The study proved that constitutionalization of law-making begins with the understanding that the society, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), is also developed through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. It was noted that the key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms, the foundations of the constitutional system, etc. It was concluded that when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term "law" may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitutional one)

■ **Keywords:** law-making; constitution; people's deputy; law; constitutional regulation; legal awareness

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■ Introduction

The development of social relations and their regulation are always mediated by law, which determines the regulation of these relations through legislative acts. The sustainable development of a state that not only declares itself democratic and legal, but is actually such, requires the adoption of laws that comply with the Constitution of Ukraine¹. Such compliance indicates the effectiveness of Ukrainian legislation, which depends crucially on the definition of clear priorities of legislative work, which should primarily be based on strategic guidelines for the process of social changes in Ukrainian society. Therefore, at the very beginning of the development of the draft law, its text should be given not only a constitutional meaning, but also a constitutional basis for the entire legislative procedure should be laid, i.e., its constitutionalization should be ensured. The term “constitutionalization” has not found its legal definition in national legislation, its unambiguous definition is still absent from the doctrine, although recently the attention of researchers has gradually turned to investigating the nature of this phenomenon from different angles. For a long period, such a legal category as constitutionalization was correlated, as a rule, with the direct effect of the constitution and the properties of constitutional norms, or their provisions in a broad sense, which are applied together with the norms of branch legislation and have an impact on them. Presently, the content of constitutionalization has expanded, and the researchers note the comprehensive constitutionalization of the legal system as a whole, including the legal order (Bocharova, 2020).

Among modern Ukrainian scientists, it is worth highlighting the scientific opinions of such researchers as Yu.O. Voloshyn (2011), T.S. Podorozhna (2016), Ya.V. Chornopyschuk (2013) and others, both on the concept and legal nature of constitutionalization as an independent legal phenomenon (Terletsy, 2014; Martseliak, 2016), and on the specific features in which this phenomenon manifests itself when establishing a constitutional meaning for certain types of social relations, various integration processes, other phenomena and law and order in general (Martseliak, 2017; Chornopyschuk, 2013).

O.V. Strieltsova (2021) investigated the constitutionalization of the association of Ukraine with the European Union. During the constitutional modernization, the provisions of the Constitution are updated to implement the further democratization of social relations in Ukraine, bringing the system of legal institutions closer to European values. The foundations for the implementation of associative relations between

Ukraine and the European Union in the Ukrainian legal system are being formed. In this aspect, it is advisable to carry out constitutional reform in Ukraine.

N.V. Bocharova (2020) studied the problems of constitutionalization of intellectual property, considering the specifics of constitutional regulation in the conditions of the information society. Modern public relations in the field of intellectual property require legal institutionalization, primarily in the norms of constitutions. In this regard, the forms of constitutionalization of intellectual property are highlighted – the reflection of legal norms in the texts of constitutions regarding the results of creative activity, as well as the constitutional interpretation of these provisions.

V.M. Campo (2020) covered the constitutionalization of economic law of Ukraine. The constitutional model of the development of the entrepreneurship institution should be implemented at the level of central and local state authorities, the Ukrainian political system in general. After all, the issue of constitutional democracy is key for Ukraine’s European integration. To stimulate fair competition in the context of the constitutionalization of economic relations, real political responsibility of these bodies and public officials is required.

T.S. Podorozhna (2016) considered constitutionalization through the lens of the activities of the Constitutional Court of Ukraine. Constitutionalization of the legal order takes place in line with the Constitution of Ukraine. The interaction of state bodies with civil society in ensuring law and order is based on the principles laid down in the Constitution of Ukraine, which acts as an “equalizer” in joint relations. A generalized definition of this concept is the principle of constitutionalization. Therefore, the principles of the constitutionalization of the legal order are ensured by the implementation of the norms of the state constitution by legal entities, their implementation in the legal system and observance of the legal order.

However, the problem of the constitutionalization essence for the legislative procedure has not yet become the subject of independent scientific research. This study will try to fill this gap partially within the scope of this paper, *the purpose of which was* to develop doctrinal approaches to determining the constitutionalization content of the legislative procedure.

■ Materials and Methods

The methodology of investigating doctrinal approaches to the definition and content of the constitutionalization of the legislative procedure, the coverage of the essential content of its components, is inextricably linked with the issue of legal understanding,

¹Constitution of Ukraine. (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

the principles of law, the constitutional doctrine, the principles of the rule of law, and led to the selection of a number of leading research methods. The analysis of the methodology of legal studies of the legislative power and the transit of legislation is primarily associated with the ideas of positivism, anthropology, sociology, axiology of law, etc., which are inherent in the current state of legal methodology (Bratasiuk, 2005; Husariev, 2006).

The priority methods used in this study were dialectical, comparative legal, modelling, and correlation methods.

The dialectical method of scientific cognition was aimed at investigating phenomena and processes in their development, interrelation, and interdependence. The method of dialectical logic allowed defining the general and special in such terms as “law”, “constitution”, “order”, “legal consciousness”, “constitutional principle”, as well as to determine the dual nature of constitutionalization, which, on the one hand, belongs to the fundamental democratic principles according to modern understanding, and on the other hand – to the ensuring activities of the rule-making procedure in Ukraine, since its objects have socio-political assessments. Based on general scientific methods of analysis and synthesis, this study covered the inherent features of current trends in constitutional reform in Ukraine, the current legislation in this area, which is developing under constitutional practices.

To determine the principle of constitutional legality in the system of democratic principles of modern European society, an anthropological approach was applied, which allowed formulating the term “constitutionalization of the legislative procedure” and the special role of the legislators in this procedure. The axiological approach helped substantiate the provisions on the constitutional value of engineering the construction of modern legislation in the context of rapid scientific and technological development, modern challenges to the legal regime of martial law and the emergence of new public priorities. The hermeneutical approach was used to interpret constitutional norms in terms of ensuring the right to free human development in the constitutional texts of individual European countries.

Since the subject of this study is related to legal comparativism, the main special legal method of research was the comparative legal method based on comparing the provisions on the constitutional procedure in the constitutions of foreign countries. Therewith, the content of the relevant provisions of the Constitution of Ukraine is compared with analogous legal material of other states, which allows for better coverage of the achievements of world constitutionalism, and shows the state of Ukrainian constitutional legislation against this background, determines its features and degree of compliance with world and

European constitutional traditions. Methods of generalization and formalization formed the methodological framework for examining the doctrinal studies on constitutionalization and constitutional regulation of sustainable development of society, practical development of various benefits in foreign countries.

Formal and logical methods (deduction and induction) allowed formulating conclusions about the possible use of the foreign practices of constitutionalization of legislation in Ukraine, and were also applied to identify the main legal approaches to the coverage of the terms “constitutional legality” and “constitutional legal awareness”.

The use of the historical legal method allowed investigating the establishment and development of scientific thought about the constitutionalization of the legislative procedure, the genesis of its formal consolidation in the Constitution of Ukraine and foreign states. The legal-dogmatic method was used to identify approaches for analysing the legislative procedure as an object of constitutional regulation and formulating the author’s definition of the term “constitutionalization”. The functional method helped investigate the judicial practices of the Constitutional Court regarding the mechanism of interpretation of the norms of Ukrainian legislation. The typology method allowed singling out the essential signs and properties of the constitutionalization of the legislative procedure – constitutional legality, constitutional legal awareness, constitutional control, protection of human rights in all spheres of social life.

The present study forms a holistic vision of the transition countries and the problems of ensuring the constitutionalization of the legislative procedure in them to ensure further constitutionalization of laws.

■ Results and Discussion

The study of the specific features of the constitutionalization of the legislative procedure should begin with the definition of such a legal phenomenon as “constitutionalization of the legislative procedure”, proceeding from which the components of the content of the subject under study will be distinguished.

Thus, Yu.O. Voloshyn (2011) distinguishes two approaches to the interpretation of the constitutionalization, claiming that it can be interpreted in a broad and narrow sense. According to the first approach, this concept is used not only in legal science, but also in other social sciences that are related to law, e.g., in conflictology (Barabash, 2008). This refers to the system of ways of legitimizing public relations that regulate social conflicts inherent in industrial societies. Under these conditions, the effectiveness of legal regulation is reduced to a cybernetic model of the constitutional structure. At the same time, the legalization of social relations within this system appears as a gradual constitutionalization of the legal order in

general. Constitutionalization is one of the key categories of research in various humanities (Voloshyn, 2011).

In the aspect of constitutionalization of social relations, V.M. Campo (2007) notes that constitutionalization is the expansion of the constitutional foundations of the spheres of social relations through the creation of legal positions, court precedents, etc. by the relevant bodies and structures. The principles of state regulation and public relations as conditions for their improvement and development are being strengthened. Through constitutionalization, an appropriate level of constitutional regulation, a system of guarantees, security, and protection of social relations is formed.

O.V. Strieltsova (2015) emphasizes that one of the meanings of constitutionalization is an increase in the list of objects of constitutional influence through constitutional regulation of new spheres of state-political existence and social life; fundamental normalization of the key social relations. The researcher complements and clarifies the position on constitutionalization as a certain modern trend of legalization of socio-political relations, which leads to the expansion of the means of constitutional influence on the mechanism of regulation of social relations, i.e., “encompassing” of ever new spheres and industries, as well as increasing the significance of constitutional regulators in relation to the influence of legal norms on them (Strieltsova, 2015).

Ukrainian researcher T.S. Podorozhna, in forming the constitutionalization of law in general, singles out the prerequisites for the existence of “constitutional dominance” formed in the legal system: firstly, the constitution is a system of fundamental norms in law in general and branches of legislation. Secondly, it has the highest legal force, and other acts of law are adopted on the basis and in compliance with constitutional provisions, in case of contradictions, the norms of the Constitution are applied. Thirdly, the Constitution is an important law-forming factor: the direct operation of its norms, the rule-making vector in legislative activity. Fourthly, the Constitution serves as the main regulatory criterion for the interpretation and application of all legal acts, the implementation of law enforcement (Podorozhna, 2016). The researcher’s conclusions appear to be useful in terms of improving the meaning of the term “constitutionalization”, which she interprets as: 1) a continuous process of concretizing the principles, implementation of the values and norms of the constitution in the current legislation; 2) a component of constitutional (legal) institutionalization; 3) the process that constitutes the international law (global constitutionalism) (Podorozhna, 2014).

The Ukrainian constitutionalist M.P. Orzikh (2011) performed the theoretical analysis of the content of constitutionalization. Orzikh singled out the

following essential features: constitutionality in the aspect of compliance with the constitution of actions or inaction of legal entities, legislative and sub-legislative acts; the existence of constitutional “consciousness” in legal ideology and psychology; constitutional construction (constitutional “engineering”), constitutional technology, namely, acquisition of constitutional skills and abilities by subjects of law; stable constitutional practice, which involves recourse to legal-constitutional postulates (as dogmas of law), constitutional ideology (in a broad sense), as well as to presumptions, traditions, and customs, including constitutional fictions, outside which constitutional regulation does not exist.

The author’s definitions and approaches to the content of constitutionalization of various processes give grounds for covering the content of the constitutionalization of the legislative procedure *per se*.

To begin with, the constitutionalization of the legislative procedure involves the adoption of laws that will correspond to such a feature as constitutional legality. That is, in the plane of concepts and definitions, the terms “constitutionalization” and “constitutional legality” are interrelated. Thus, constitutional legality is a relatively new concept in the Ukrainian legal vocabulary of the countries of transitional democracies, since the legislation of such countries is in constant motion and change, including periodically repeating diametrically opposite vectors of the countries’ development, which, unfortunately, cannot be ruled out. The term “constitutional legality” in the legislation of different countries is usually not directly consolidated and is not used (Kalynovskyi, 2022).

To investigate the principle of constitutional legality, it is necessary to analyse important points in the methodological aspect. In scientific sources, constitutional legality is correlated with its security and protection, i.e., with the study of the mechanism for ensuring the effect of the Constitution. In this case, ensuring constitutional legality, its protection, constitutional responsibility, and constitutional control are subject to analysis (Skrypniuk & Kmit, 2016). In general, the principle of constitutional legality is a requirement of the need for lawful behaviour or activity of subjects of constitutional legal relations. The adoption, implementation, and application of legal norms take place only pursuant to the Constitution and laws of Ukraine. The concretization of the principle of constitutional legality is reflected in its properties: universal obligation, guarantee, unity, and reality, which direct the work of state authorities (Kolomiitsev, 2020).

Turning this thesis back to the legislative procedure, constitutional legality is a mandatory condition for law-making, and it is thanks to it that the constitutionalization of this process as such takes place. The constitutional content of the adopted laws and

other regulations requires not only a proper constitutional procedure for their adoption, but also exhaustively clearly stated norms and regulations of laws, which after their entry into force will indicate their quality. For the constitutionalization of the legislative procedure, it is important that the quality of laws depends on the actual observance of the entire legislative procedure, the specific actions of the participants of this procedure at its particular phases and stages (Podorozhna, 2016).

However, today's ease of modern legislators to introduce changes (often unsystematic and controversial) to laws, underlines the main constitutional prerequisite of the legislative procedure – the real need of society for new laws, and not for another format of legal regulation. Real and valid consideration and generalization of the needs of groups of persons or society as a whole in legislative regulation, the choice of the most successful legal forms of such regulation in the form of different variants of legislative prescriptions is a manifestation of the legislator's creative duty, which is simultaneously the latter's legal duty. The preparation of inherently poor-quality laws inevitably entails the need to assess such actions from the standpoint of constitutional legality (Blikhar, 2018).

The presentation of the requirements of constitutional legality to the content and form of the legislative procedure is conditioned upon the fact that in each particular case, the subject of legislative powers is a collective of people – a deputy corps called on behalf of the people for the primary legal development of the world of public life by translating the elements of public relations that are ripe for legal regulation into the normative legislative provisions. Yu.V. Tkachenko classifies the requirements of constitutional legality, which were consolidated in the Constitution of Ukraine and which relate to the legislative procedure, into three groups. The first group consists of those that relate to the content of law-making. These are constitutional regulations that have become the basis for implementing a broad program of legislative activities. Here the scientist refers to the provisions of the articles of Chapter I “General principles” of the Constitution of Ukraine¹, which prescribe the general principles of the constitutional system that scientifically substantiate the content of laws. The second group includes the requirements for ensuring the supremacy of the Constitution of Ukraine in the legal system (Article 8), as well as the requirements that consolidate the hierarchical order of regulations (Articles 106, 113, 117, 118, 144)². Yu.V. Tkachenko emphasizes that in all these cases, the criterion of the

constitutionality of laws, as well as other regulations, is their content, since it is impossible to determine the legality or illegality of any of them proceeding solely from the analysis of the form alone. The third group consists of requirements of constitutional legality, which relate to the regulation of certain forms of the legislative procedure. The main requirements of constitutional legality in the field of lawmaking include the timely development and publication of new, amendments and repeal of outdated laws or their prescriptions (legal norms). They should not be conflated with the general concept of law-making, i.e., the entire process that is expressed in the publication, systematization, change, and cancellation of legislative material.

The next sign of the content of the constitutionalization of the legislative procedure is the presence of proper constitutional legal awareness of all participants in this process: from citizens, subjects of legislative initiative – to subjects of adoption of draft laws as laws.

In this context, it should be emphasized that the current state of law-making activity in Ukraine more convincingly states the gap between the objective development of social relations and the existing legal norms, which are intended to regulate the life of society. The crisis of differentiation between the “real” and “legal” constitutions deepens, and this leads to the levelling of the role of constitutional law (as law in general) in society. This situation indicates the absence or weak development of the values of constitutionalism in the modern legal culture, which is typical for states living in a transitional period of development.

Pointing to the transitional state of development of the state of Ukraine, it is not the only one in this period. Many European states (Austria, Bulgaria, Spain, Germany, Poland) during the transition period sought to become countries of sustainable democracy. Distinctive features of these countries, from the perspective of legal analysis, were the presence of constitutional control, effective protection of human rights, and the introduction of the rule of law in all spheres of public life. Admittedly, in every state, the principle of the rule of law is interpreted by the legal system (Berestova, 2020). Therefore, it is quite obvious that for young constitutional democracies, the problem of transitional justice is relevant, which will counteract the post-totalitarian legal practice, the presence of dogmatism, formalism, and a contemptuous attitude towards human rights (Savchyn, 2019).

The transitional state of countries determines a wide complex of necessarily unstable processes, however, the internal, basic ground of these processes can still be established. Thus, the specific features

¹Constitution of Ukraine. (1996, June). Retrieved from <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

²Ibidem, 1996.

of transitional societies are that they adopted only certain external signs of democracy (free elections, a constitution with democratic principles, multi-party system), but did not implement such principles as the rule of law, separation of powers, etc. Such hybrid formations are considered “illiberal democracies” (Schedler, 2006), or “broken back democracies” (Rose, 1998), and their study in the political science literature formed a new field related to the “quality of democracy” (O'Donnell, 2004) and control of public administration. As a rule, democracy creates a more favourable environment for socio-economic growth and a more equitable distribution of public goods (Reuveny, 2003). Most of the new democracies showcase the existence of serious contradictions, primarily concerning the protection of human rights, respect for the principle of the rule of law, accountability, and transparency. “Effective democracies”, i.e., those where the principles of the rule of law are observed, are currently a minority among the countries of the world, accounting for approximately half of all democratic states and a quarter of all countries in the world in general. Support for democracy by many citizens is superficial, with no real effective democratic motivation (Inglehart, 2003).

In “new” democracies, citizens may misinterpret the meaning of democracy itself, associating it with well-being (as in developed countries with sustainable democracy) and not putting the primary meaning in this self-sufficient concept, they support the new state-political regime in name only (Stoiko, 2016). All the above signs and factors, unfortunately, are inherent in Ukraine to a certain degree, given the constant reformation processes of a permanent nature of all institutions since the moment of its independence. Naturally, all of the above could not but affect both the constitutional legal consciousness of the legislators and the legal consciousness of ordinary citizens of Ukraine.

Legal awareness is a system of ideas, views, feelings, and representations of individuals, social groups, and the entire society regarding the current system of law and its role in public life. Therefore, the constitutional legal consciousness should be clarified through the characterization of legal consciousness as a general theoretical legal category (Rusynchuk, 2018). It is common knowledge that two components are distinguished in legal consciousness: legal ideology (“a systematized scientific manifestation of legal views, principles, requirements of society, classes, various social groups and strata of the population”) and legal psychology (“a set of legal feelings, value attitudes, sentiments, wishes, and experiences inherent in society as a whole or in a particular social group”) (Salei, 2019).

The idea of legal awareness as a more complex system containing rational, emotional, informational, evaluative, and volitional elements allows discussing the integration of certain legal knowledge,

value and ideological principles, emotional and volitional legal guidelines, legal traditions and norms, institutional forms etc., in its structure. Such a set of components is necessary to achieve legal goals in relation to rational, ideological, ideological-rational, emotional-psychological, and decisional and behavioural elements. The rational-ideological component of legal awareness is the prevailing knowledge and understanding of certain aspects of legal practice in society; the legal system and its elements; state-legal mechanisms of power and management; adoption and implementation of legal decisions. That is, rational-ideological legal consciousness is stable stereotypes of legal consciousness in its forms and manifestations (Terlets'kyi, 2014). Legal awareness refers to the conditions for the implementation of legal norms, promotes the voluntary implementation of legal prescriptions, and creates a sense of responsibility and intolerance among citizens to violate the principle of constitutional legality. A prominent level of legal awareness contributes to public control over the government, ensures the adoption of decisions by the authorities in compliance with the democratic principles of law, disciplines the subjects of the legislative procedure, enables the continuity of the constitutional procedure, guarantees the continuity of decisions, forms the foundations of the democratic vector of development”. In legal awareness, the principle of constitutional legality is transformed into the following forms: knowledge (awareness) of the individual about the content of constitutional norms and legal activities; the individual's attitude towards constitutional values (Salei, 2019). This means that constitutionalism in Ukraine only acquires the characteristics of an integral element of legal culture and legal awareness of citizens (Babenko, 2022).

Thus, constitutionalization of law-making begins with the understanding that, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), the society is also developed through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. The key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms (first and second generation), the foundations of the constitutional system, etc. At the same time, when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term “law” may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitu-

tional one). In Ukraine, the law and parliament, as the only representative body, have been experiencing a considerable decline in their symbolic and political role lately, up to a gradual loss of prestige. This is conditioned upon the fact that once a legislative activity, as a truly creative and comprehensive process of creating the external form of law (law genesis), recently has been increasingly reduced solely to procedure (not always upholding its constitutionality), and its important aspect was only the result.

Achieving such a result can take place in many ways: from following the constitutional procedure of introducing a draft law clearly defined by the Regulations of the Verkhovna Rada of Ukraine (VRU) and its adoption to frank lobbying for the adoption of the desired draft law; repeated holding of “signal voting” as the formation of forecasts in real time of the probability, possibility, or reality of the adoption of the law; registration of a considerable number of alternative draft laws of a related subject of regulation; making a hypernumber of amendments to the main registered draft law (amendment spam), etc¹. That is, recently, when adopting laws, unfortunately, the speed of their adoption prevails, and therefore the adopted laws, as a rule, are aimed at providing only temporary solutions (despite the preamble or the special purpose of the law), and the law itself begins to lose its traditional features (features of general, abstract, and permanent laws).

The last feature of the constitutionalization of the legislative procedure to be highlighted in this paper is constitutional engineering as a constitutional construction (in normal conditions or in a conflict or crisis).

Constitutional engineering in the doctrine is usually understood as the structure of the Constitution, which is planned and created based on incentives (Sartori, 2001). Through the constitutional engineering methods, the political legal system is transformed. These methods ensure the evolutionary and gradual transformation of existing constitutional institutions to create a new constitutional structure, if a constructive approach to the modification of existing constitutional institutions is followed. The term “constitutional engineering” is used as a legal activity that is carried out by a specialized institution in the field of constitutional legislation of European states and is aimed at bringing constitutional legislation into compliance with the content of the European constitutional heritage (Chornopyskyi, 2017). Therefore, when talking about constitutional engineering, one should proceed from the study of various constitutional reforms, which, unfortunately, abound in the public life of the state of Ukraine.

Thus, the last two decades of Ukraine’s development are also characterized by the existence of a combination of two factors that did not allow it to become a country of sustainable democracy. This refers to periodic, but quite frequent changes in the vectors and directions of the state’s development (Koshova, 2022) (usually after the regular elections of the President of Ukraine, to the Verkhovna Rada of Ukraine, etc.) and revolutionary events that, as a special type of constituent power of the people, were aimed at returning to the European vector of state development, namely the “Orange Revolution” of 2004 and the “Revolution of Dignity” of 2014. The political situation of transit societies is characterized by many competing political entities (parties) (Khotynska-Nor, 2020). As correctly noted by V.F. Smolianiuk, “the political system of Ukraine, which is a “mix” of a parliamentary republic and a presidential government, has certain rudimentary Soviet features. Fragments of the political system act against each other, weakening the potential of Ukrainian society. There is a permanent struggle between the branches of government for powers, since the Constitution stipulates them indistinctly and even overlaps them. The same issues exist in relation to the functions of the head of state and the head of government” (Smolianiuk, 2016).

Furthermore, the modern period of strengthening and development of Ukraine (and in fact its restoration as a state governed by the rule of law by fighting for its freedom and the European vector of development) has become even more complicated. A separate adverse factor that affected the entire legislative, executive, and judicial branches of government was the illegal and cynical occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation, the unprovoked armed aggression in the Donetsk and Luhansk regions, starting in February 2014, and the full-scale military invasion of the Russian Federation on February 24, 2022. Waging a systematic and complex “hybrid war” against the civilized world since 2014, the Russian Federation unsuccessfully tried to push the narratives: “internal conflict”, “civil war”, “quasi-state”, “coup d’état”, “not a government, but a bloody regime” etc. Admittedly, having a compelling media and political resource in Ukraine and the world, the Russian Federation substantially unbalanced and destabilized Ukrainian institutions, caused considerable damage to the authority of regulatory mechanisms, as a result of which the stability of the Ukrainian political system, political stability was maximally undermined, various institutional mechanisms were destroyed, etc. In the conditions of the existing statehood-

¹Law of Ukraine No. 1861-VI “On the Rules of Procedure of the Verkhovna Rada of Ukraine” (2010, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1861-17#Text>.

destructing processes and the need to make instant decisions in this regard, the activity of the Verkhovna Rada of Ukraine comes to the fore, since its constitutional functions include ensuring the stability of the legal order and trying to form strategic vectors for its development and democratization (despite the influence of bifurcation). The Verkhovna Rada is authorized to provide a prompt response to changes in public relations in crisis and emergency conditions in the form of laws, resolutions, statements, and other acts of its competence. Acting correctly, within the framework of the constitutional procedure, even in the worst conditions, the legislature of a country of sustainable democracy carries out activities to develop the law. However, Ukraine is still characterized not by correctness, but mostly by inconsistency of actions in the field of legislative activity.

And the more complex the political situation in the state, the higher the level of legitimacy in society should be. For instance, V.V. Lemak defines the minimum conditions for the legitimacy of constitutional reform in a democratic society: the balance and transparency of the process at all its stages; a compromise between the government and the opposition; the implementation of the main stage of reform in parliament – the only mechanism that allows coordinating the positions of various political and public actors, all territorial components of the state, and making a joint decision; a broad public discussion of the content of the reform in society, primarily in the expert environment of professional lawyers (Lemak, 2016).

The above convinces that when implementing constitutional reform (implementing constitutional engineering), the requirement of enhanced legitimacy should be applied to the reform process, since constitutional reform is not an extraordinary political process with elements of competition, intrigue, and delay in decision-making due to a situationally formed majority. Such a process is different from sustainable politics and requires additional means of legitimation.

■ Conclusions

Based on the presented material, the definition of the term “constitutionalization of the legislative procedure” can be formulated, which is understood as the complex systemic influence of constitutional law, the consolidation of the constitutional basis from the

pre-draft stage (considering the stage of public discussion), the draft stage, the stage of adoption of the draft law, the certifying, information stage, to the stage of entry into force by the adopted law and approval of the legislative procedure as a constitutional value of a democratic, legal society.

The key element of the mechanism of effect of constitutional values on the behaviour of subjects of constitutional legal relations is constitutional legal awareness, which at the psychological level determines the vector of behaviour of a particular subject. The present paper states the substantial importance of constitutional legal awareness and legal culture in the legislator – the sole representative body of Ukraine, comprising a numerous deputy corps, the largest subject of the legislative initiative, authorized for individual introduction and registration of both complex draft laws governing a separate special sphere of relations, and introduction of amendments (including point ones) to the current laws.

It was proved that when implementing constitutional reform (implementing constitutional engineering), an increased level of legitimacy is required for the reform process. The more complex the political situation in the state, the higher the level of legitimacy in society should be.

Constitutionalization of law-making begins with the understanding that the development of society, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), is also carried out through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. The key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms (first and second generation), the foundations of the constitutional system, etc. It was stated that when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term “law” may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitutional one).

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Окремі складові змісту конституціоналізації законотворчого процесу в Україні

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■ **Анотація.** Актуальність статті зумовлена потребою в дослідженні окремих елементів змісту конституціоналізації законотворчого процесу. Метою є формування доктринальних підходів до визначення змісту конституціоналізації законотворчого процесу. У статті використано комплекс наукових методів: діалектичний, моделювання та кореляції, історико-правовий, порівняльно-правовий, формально-логічний та інші методи. Сформовано авторську дефініцію поняття «конституціоналізація законотворчого процесу». Доведено, що конституційна правосвідомість у психологічному аспекті формує напрям діяльності суб'єктів суспільних відносин. Акцентовано на значущості конституційної правосвідомості та правової культури законодавця – єдиного представницького органу України, найбільш численного суб'єкта законодавчої ініціативи. Доведено, що конституціоналізація законотворчості розпочинається з усвідомлення того, що розвиток суспільства, окрім практичного освоєння різноманітних благ (звісно шляхом нормативного регулювання відносин з такого освоєння), здійснюється через духовну складову, різноманітні форми культури, що містять у собі створені історією людства ідеальні образи, за допомогою яких пізнається світ. Зауважено, що найважливіші цінності отримують нормативне закріплення найвищого конституційного рівня як права і свободи людини та громадянина, основ конституційного ладу тощо. Сформульовано висновок стосовно того, що коли держава проживає перехідний період, суспільство стикається з кризою правового регулювання, коли право через певні причини частково втрачає власний статус найбільш ефективного та універсального регулятора суспільних відносин. У перехідних суспільствах у крайніх випадках поняття «право» може починати асоціюватися з бездіяльністю і безвихіддю, наслідком чого може стати сплеск правового нігілізму (одного з виявів феномену деформації правосвідомості, передусім конституційної)

■ **Ключові слова:** законотворчість; конституція; народний депутат; право; конституційне регулювання; правосвідомість