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Transformation of Ukrainian Constitutional Law: Human Rights and Security

An Interdisciplinary Study in Constitutional Law and Political Science in the Context of Digitalization, Globalization and European Integration

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Introduction

The transformation of the Constitution of Ukraine in the context of digitalization, globalization and integration processes is becoming an important tool for the protection of human rights and ensuring the stability of the state. In the context of growing global challenges, such as the war in Ukraine and other international conflicts, the need to adapt the legal system becomes particularly urgent. This paper analyses how new challenges that face Ukraine with combining historical and social approach can contribute to the effectiveness of constitutional change in Ukraine.

Relevance of the topic

The relevance of the topic lies in the need to respond to rapid changes in society and the international environment. As stated in the abstract, "globalization and international law are becoming inseparable, even when they concern private matters"[1].This emphasizes the importance of adapting Ukrainian legislation to international standards to ensure effective protection and guarantee of human rights in the face of modern challenges in Ukraine. Rights need be concretized in the nowadays situation in Ukraine and has 2 levels of the establishment: theoretical and practical one. It should be applied to Ukraine, taking into the account its historical, geopolitical, cultural, social and other issues. We should not have just norm in Constitution, but with real action. Constitution should be enough and effective instrument in presence situation relevant to our updated problems and challenges. There are most screaming 2 pillars, that we need manage during the changing the Constitution of Ukraine. One is applying to reconstruction according to the principle “Make It Better”, solving the security problems and establishing stable security policy, digitalization, globalization, technological issues with creating and the following implementation nationality interests and identity, Ukrainian centrism with the dignity of person as the highest value. The second pillar is to establish and realize a sustainable economy, focus on climate change and preserve environment not only for us, but for future generations also. Establishment, guarantee and realization of these pillars should be the direct function of Constitution. Openness of Constitution for the people and its effectiveness are the main criteria of the success of the constitutional process.

In addition, the European vector of Ukraine’s development, officially enshrined in the Constitution (Articles 85 and 102)[2], Preamble and strengthened by Ukraine’s acquisition of candidate status for membership in the European Union in 2022 is of particular importance. This

[1]Diane Fromage (edited), Jacques Ziller: European scholar, European University Institute, Florence, 2022, p. XIV.
[2]Verkhovna Rada of Ukraine. The Constitution of Ukraine, No. 254к/96-VR, Preamble, Article 85, 102, URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en, Accessed date: 21.06.2025

strategic course involves not only political and economic commitments, but also full-scale harmonization of legislation with the acquis Communautaire — a set of norms, principles and standards of EU law. The implementation of the acquis Communautaire is not only a technical or legal requirement, but a basic and systemic transformation of Ukraine's legal architecture in accordance with European constitutional traditions, including multi-level protection of human rights, increasing the resilience of the legal system to crisis phenomena, and establishing the rule of law as a fundamental principle. A special role in the process of approximation of Ukrainian legislation to the legal standards of the European Union is played by the European Charter of Fundamental Rights, which enshrines environmental rights as an integral part of fundamental human rights. According to Article 37 of the Charter[3] a high level of environmental protection and improvement of its quality is an essential element of the European Union's policy, which must be ensured in the context of the principle of sustainable development. Thus, environmental rights are recognized not only as a component of environmental policy, but also as part of the general system of protection of human dignity and well-being, which is especially relevant for Ukraine in view of the prospect of EU membership and the obligation to implement the acquis Communautaire. Introducing the Lisbon Treaty[4], European states have formalized this "substantive" constitution by incorporating the EU Charter of Fundamental Rights into primary law and by enshrining environmental obligations in the text of the Treaties[5]. In this context, Article 191 of the Treaty on the Functioning of the European Union (TFEU)[6] defines the key objectives of EU environmental policy, including health protection, rational use of resources, pollution prevention and international cooperation, based on the precautionary principle and the polluter-pays principle. At the same time, Article 37 of the EU Charter of Fundamental Rights guarantees everyone the subjective right to a high level of environmental protection and sustainable development. This approach creates a dual structure - objective obligations and subjective rights - that transforms environmental standards into real guarantees that can be defended in court, and not just declarative 'good intentions'. The alignment of Ukrainian legislation with the acquis

Communautaire will not only help to fulfil obligations towards the EU but will also strengthen the domestic legal protection of individuals in the face of modern global and regional challenges, allowing Ukraine not only to integrate into European environmental policy, but also to

[3]European Union. Charter of Fundamental Rights of the European Union, Document 12012P/TXT, Title IV, Article 37, URL: http://data.europa.eu/eli/treaty/char_2012/oj, Accessed date: 21.06.2025

[4]European Union. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Document 12007L/TXT, URL: http://data.europa.eu/eli/treaty/lis/sign, Accessed date: 21.06.2025

[5]Vasco Pereira da Silva, Green Constitution: The Right to the Environment, Encyclopedia of Contemporary Constitutionalism, Springer, pp. 4–5.2022

[6]European Union. Treaty on the Functioning of the European Union (TFEU), Document 1-2016ME/TXT, 2016, URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT, Accessed date: 21.06.2025

strengthen its own environmental standards and citizens' rights.

In the context of modern European integration processes, it is also important to note the special role of digitalization in the transformation of constitutional and legal approaches to the protection of human rights. The foundations of this protection rest on the universal recognition of human rights, as reflected in the Universal Declaration of Human Rights, particularly Articles 1 and 2, which establish human dignity[7].

With the rapid development of digital technologies, these fundamental principles are increasingly being applied in the digital environment. The digital environment is becoming not only a new space for the implementation of traditional rights, but also a source of new challenges that require adequate legal regulation at national and supranational levels. The experience of the European Union shows that digital rights - from the protection of personal data to the right of access to high quality and secure electronic public services - are already an integral part of the concept of human rights, which is clearly reflected in particular in Article 8 of the Charter of Fundamental Rights of the European Union[8],which guarantees the right of every person to the protection of personal data, as well as in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)[9], which establishes high standards of digital security, privacy and the right to access information in the context of the EU digital economy. Given Ukraine's course for full integration into the European legal space, ensuring citizens' digital rights should become a priority of state policy. In the context of cyber threats and hybrid attacks, which have become a new dimension of security in the 21st century, the state must not only guarantee the protection of digital privacy but also create institutional mechanisms for an effective response to violations of rights in the digital environment.

Digitalization is becoming an important tool for ensuring environmental rights, which is especially relevant in the context of global climate challenges and Ukraine's course for implementing the acquis of the European Union. Modern digital technologies contribute to the transparency of environmental information, the creation of open environmental registers, early warning systems for pollution, and provide citizens with real opportunities to participate in the

[7] United Nations, Universal Declaration of Human Rights, UN General Assembly Resolution 217 A(III), 10 December 1948, Arts. 1–2. URL: https://www.un.org/en/about-us/universal-declaration-of-human-rights, Accessed date: 21.09.2026

[8]European Union. Charter of Fundamental Rights of the European Union, Document 1-2012P/TXT, Title III, Article 3, 2012, http://data.europa.eu/eli/treaty/char_2012/oj, Accessed date: 21.06.2025

[9]European Union. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Document 32016R0679, 2016, URL: http://data.europa.eu/eli/reg/2016/679/oj, Accessed date: 21.06.2025

processes of making environmentally significant decisions. Such mechanisms directly correspond to the provisions of the Aarhus Convention[10] which guarantee everyone's right of access to information on the state of the environment, participation in decision-making and access to justice in environmental matters. Digital platforms also ensure the monitoring of compliance with sustainable development standards, as stipulated in Article 37 of the EU Charter of Fundamental Rights, thus contributing to the formation of a culture of eco-democracy and increasing the sustainability of environmental security. For Ukraine, this is not only a requirement for adaptation to European standards, but also a key factor in improving the quality of life and restoring citizens' trust in state institutions in the context of post-conflict reconstruction.

Taking into account the above, it can be concluded that the transformation of the constitutional and legal system of Ukraine in the context of European integration, digitalization and environmental challenges should be carried out in a comprehensive manner - through harmonization with the EU acquis, strengthening the protection of digital rights, ensuring sustainable development and integrating security components into the system of human rights protection. In today's conditions, where hybrid threats, cyber-attacks and environmental disasters are increasingly becoming elements of global instability, the constitutional system must provide not only guarantees of rights and freedoms, but also effective mechanisms for legal responses to threats to the security of individuals, society and the state. Thus, security, human rights and sustainable development should be considered as interrelated components of a single legal architecture that meets the standards of the European Union and ensures the stability of Ukraine's democratic legal system.

Scientific novelty

The scientific novelty of the study lies in the analysis of the historical background as a component of the constitutional process in the formation of the Ukrainian national interest as a key factor in Ukraine's future success and a step-by-step analysis of the stated challenges that Ukraine is currently facing in order to transform the current Ukraine from a rule of law into an effective instrument for protecting the fundamental rights of Ukrainians. a truly working direct action of the Constitution and, in general, the transformation of Ukraine into a strong partner, rather than a begging subject of international relations.

Special attention is paid to the determination of the decisive role of the public in the formation of international and domestic law, which is emphasized by the President of the Portuguese Republic - Marcelo Rebelo de Sousa, who notes "the decisive role of the public in

[10] The Aarhus Convention: An Implementation Guide (second edition), June 2014, Art.4,5,6,9, URL: https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition, Accessed date: 21.06.2025

international and domestic law, even at times when people, their organizations and the so-called civil society are called upon to take the initiative, against or as an alternative to the excessive weight of public powers"[11].

Consideration of this aspect allows us to formulate a new understanding of constitutional changes not only as a legal but also as a social phenomenon. Constitutional changes do not occur in a vacuum but are a response to changes in the social and political environment that force the legal system to adapt to new conditions. An important part of this process is public participation, since only through active interaction with society can effective and sustainable development of legal norms be achieved[12].

Special emphasis is placed on the consideration of security aspects in constitutional transformation, which is particularly relevant in the context of the Russian Ukrainian war. Emphasis is placed on the consideration of security aspects in constitutional reform, which is particularly relevant in the context of the Russian Ukrainian war. In the context of growing global challenges, where digitalization, globalization and integration processes are changing both domestic and international politics, the transformation of the Ukrainian Constitution is important not only for the protection of human rights, but also for the adaptation of the state system to the new realities of the security environment. This process can be linked to the issue of creating a "common military security space", which is discussed in the excerpt by Herbert Küpper[13]. This example highlights the importance of adapting the constitutional mechanisms of EU countries to strengthen defense capabilities, which is an important experience for Ukraine.

Another novelty is the inclusion of the digital dimension in the constitutional reform. As P. Starski notes[14], cyber-attacks and information wars already directly affect the state system and require new legal protection mechanisms. For Ukraine, this means the need to enshrine cybersecurity provisions at the constitutional level.

Another important aspect is the consideration of climate and energy challenges, which, according to K. F. Germelmann[15], should be integrated into modern constitutional systems to ensure

[11]Vasco Pereira da Silva, Kämmerer J.A, Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Rebelo de Sousa Marcelo, PREFACE, p. XIV, 2023 URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[12]Vasco Pereira da Silva, Kämmerer J.A., Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Rebelo de Sousa Marcelo, PREFACE, p. XV, 2023, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[13]Vasco Pereira da Silva, Kämmerer J.A., Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Küpper, Herbert. «Im Schatten Russlands: Ein gemeinsamer 'Raum der militärischen Sicherheit' im Mehrebenensystem des Europäischen Verfassungsverbunds?» pp.3-80, 2023, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[14] Vasco Pereira da Silva, J.A., Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Starski P., Cyber-Security in Times of War: a new public task, pp.97-112, 2023, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[15] Vasco Pereira da Silva, Kämmerer J.A, Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Claas Friedrich Germelmann, Klimaneutraler Umbau der Energiesysteme und Stellenwert der Energieversorgung im internationalen und europaischen

sustainable development and energy independence.

Thus, the above constitutes the scientific novelty of my paper and offers a comprehensive vision of the transformation of the Constitution of Ukraine as a living mechanism capable of adapting to the challenges of the digital age, global security, climate change and the demands of civil society.

Goals and objectives of the study

The main objective of this paper is to understand the most important challenges facing Ukraine today, analyses whether the current constitution provides solutions to these challenges, and consider what changes need to be made to the Constitution of Ukraine to address these challenges. The objectives of the study are: 1) identifying modern challenges and risks affecting the constitutional order, with a focus on security issues in the context of the Russian Ukrainian war; 2) studying the role of public participation in shaping constitutional changes and ensuring the accountability of state institutions; 3) finding solutions to these challenges and problematic issues at a constitutional level. These tasks aim to provide a comprehensive analysis of constitutional transformation in Ukraine and develop practical recommendations for meeting modern challenges.

1. The Constitution as the basis of national identity and strategic development

The Constitution of Ukraine is the fundamental law of society and the state, which is an established and axiomatic provision. It defines the principles of organization and activity of state power and guarantees the rights and freedoms of citizens. However, if Ukraine is to truly take its rightful place in the world and guarantee its citizens' rights and freedoms, it is important for us to actively transition from a declared course to a practical one. This is, of course, a huge challenge, and our present and future will depend on how successfully we overcome it. I believe in my country and am convinced that we can become a successful and competitive nation where the supreme value is the individual. We will turn the Constitution — our Highest Law — into a real, living instrument, creating a country for people that will give Ukraine a history of real successes based on humanity and honor.

Creating its own independent and independent legal system was an extremely difficult process for Ukraine, inextricably linked to a long period of oppression of the Ukrainian nation. For centuries, the Ukrainian people have suffered the systematic suppression of their statehood, culture, language and rights. For many centuries, the Ukrainian nation was systematically

verfassungsrecht, pp. 147-177, 2023, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

oppressed to eliminate its national identity, culture and statehood. Ukraine's constitutional process is the result of a long struggle for freedom, justice, and the right to its own state system. I will discuss this in more detail in subsection 1.2 because the past informs the present and future. The existence and validity of the modern Constitution of Ukraine is the embodiment of the aspirations of the Ukrainian people for democracy, the rule of law and the protection of the rights and freedoms of every citizen.

Thus, the theoretical foundations of Ukraine's constitutional transformation reflect a combination of deep historical roots and modern challenges, which necessitate the adaptation of legal norms to new conditions. This highlights the importance of making the constitution an effective instrument. It also highlights the need to ensure that the constitution serves every citizen of our state effectively.

1.1. The meaning of the Constitution in the context of human rights

The constitution, as the basic law of the state, is the foundation of legal order and the main guarantee of human rights and freedom. Its role in public life is not only to determine the political organization of the State, but also to lay the foundations for the legal status of everyone. In Ukraine, the Constitution plays a particularly important role in the context of human rights protection, since it proclaims the person as the highest social value and defines his rights and freedoms as the basic principles of the state activity.

The Constitution of Ukraine[16] enshrines the principle of the rule of law, which is fundamental to the entire legal system. According to Article 3 of the Constitution of Ukraine, human rights and freedoms are the highest social value and their protection determines the content and direction of state activity. Thus, the Constitution lays the ideological foundation of the state power, which directs its activities towards the establishment and protection of human rights. At the same time, Article 8 of the Constitution of Ukraine declares it to be a norm of direct effect, providing for its direct application in cases of violation of citizens' rights. In practice, however, this norm is not properly implemented: Ukrainian courts rarely refer directly to constitutional provisions, and the mechanisms for their implementation are imperfect. Consequently, unfortunately, the Constitution of Ukraine is not currently an effective instrument for establishing and protecting human rights, as required by its own text and European standards of the rule of law.

Moreover, Articles 3 and 28 of the Constitution employ the outdated term 'honor and dignity', an echo of Soviet legal discourse in which 'honor' had a collectivist, reputational nature rather than a humanistic one. In modern legal systems, particularly in Europe, human dignity is recognized as

[16]Verkhovna Rada of Ukraine. The Constitution of Ukraine, No. 254к/96-VR, Version 01.01.2020, Preamble, Articles: 3, 8, 28 URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en, Accessed date: 21.06.2025

the primary and unconditional basis of the entire legal order. Its inviolability must be more than just a value; it must also be a real source of legal norms and state obligations. In this context, it is important that the Constitution of Ukraine recognizes human dignity as an absolute value that is unconditional, rather than simply declaring 'dignity' alongside the abstract concept of 'honor'. This requires complete reorientation of state policy towards the individual as an independent legal entity with inalienable rights. Without this, it is impossible to establish a state based on the rule of law where every citizen feels protected legally, morally, and existentially.

I agree with the authors of the book «General Theory of Law, edited by M. Kozyubra»[17], who argue that human rights should be recognized by the world community as benefits and conditions of life that a person has the right to claim from the state and society in which they live. Thus, human rights have become a fundamental value guideline for the modern civilized world, without which the development of societies is impossible. At the same time, human rights have not only theoretical significance but are also enshrined at the level of legal status, at the constitutional level. However, for the constitution to become a truly effective instrument for the protection and implementation of human rights, it must be constantly improved and adapted to modern challenges. It is through changes and reforms of the constitution that it is possible to ensure the real impact of this basic law on the life of every citizen and the development of the state.

Human rights are a key institution of constitutional law in many states, where approaches to their regulation are typically based on integrating two main legal principles: natural law and positivism. To gain a better understanding of the nature of these rights, it is helpful to refer to the German doctrine, in which the fundamental rights enshrined in the Basic Law of the Federal Republic of Germany[18] are recognized as constitutional. The Basic Law of the Federal Republic of Germany, adopted on 23 May 1949, contains Chapter I, «Fundamental Rights» (Grundrechte), which forms the basis of the country's legal system. This chapter establishes fundamental human rights and freedoms.

The concept of the rule of law was developed by German legal scholars and, following World War II, it became an integral part of European political identity. It formed the basis for the legal systems of most European countries. The principle of the rule of law has found formal constitutional recognition in the constitutions of most post-socialist Eastern European countries, and Ukraine was no exception. Our prospects in the EU will be determined by how well Ukraine manages with this task.

[17]General theory of law: textbook. M.I. Kozyubr M.I.. Kyiv: Vaite, P.50, 2015, URL: https://shron1.chtyvo.org.ua/Koziubra_Mykola/Zahalna_teoriia_prava.pdf?PHPSESSID=4l1r28ikmpnh1ukn2a95fjq ok4, Accessed date: 21.06.2025

[18]Federal Ministry of Justice, Basic Law of the Federal Republic of Germany, Chapter 1, URL: https://www.gesetze-im-internet.de/englisch_gg/, Accessed date: 21.06.2025

Ukraine also uses the above-described approach: constitutional legislation combines the concept of inalienable natural rights with state legislation that enshrines these rights. It is important to note that Chapter II of the Constitution of Ukraine is devoted to the rights, freedoms and duties of man and citizen. It establishes a wide range of personal, political, social, economic and cultural rights. While these rights are proclaimed, they are not always supported by the appropriate guarantees for their implementation and protection. One of the significant shortcomings of the Ukrainian Constitution today is the declarative nature of this section. For instance, it is impossible to guarantee the right to a safe environment when considering the Chernobyl disaster of 1986 and the environmental issues in areas such as Kryvyi Rih. Similarly, the right to an adequate standard of medical care, enshrined in 1996, has not been realized due to a lack of systemic reform in the sector. It was only in 2017 that a significant reform of medical education was carried out, with the aim of improving the quality and accessibility of medical training. This illustrates the gap between constitutional norms and their practical implementation. To eliminate these gaps, the Constitution of Ukraine must create real mechanisms for the implementation and guarantee of human rights. As Ukraine develops its own system of constitutional law and improves the protection of human rights, it can learn a great deal from Germany's experience, where constitutional norms have direct effect and effective mechanisms monitor their observance. This approach helps to avoid declarativeness and contributes to the effective protection of citizens' rights and freedoms.

In the context of the European development of the legal system, it is particularly important to combine these two approaches through the harmonization of Ukrainian legislation and the adoption of relevant constitutional norms. The European Convention on Human Rights (ECHR) has become a fundamental document that legally formalizes and protects human rights at the European level. But we should understand that only its formal adopting and the formal consolidation of human rights standards alone do not guarantee their full implementation. In modern conditions, it is particularly important not only to implement international approaches, but also to critically analyses existing gaps in national legislation. It is important to systematically identify shortcomings in law enforcement, develop effective monitoring mechanisms for compliance with human rights and propose practical solutions to the specific problems faced by Ukrainian society. In this context, ensuring the effective functioning of the constitutional control institution is of key importance. This institution must guarantee legislative acts comply with the Constitution of Ukraine, respond promptly to violations of fundamental rights and act as a guarantor of their real protection. Without proper constitutional control, constitutional rights remain merely declarative. Therefore, reforming this institution is one of the decisive steps towards

strengthening the rule of law.

Of particular importance is the norm on the direct effect of the provisions of the Constitution (Article 8), which allows citizens to protect their rights directly based on the Constitution before the courts and other bodies for the protection of human rights. This provision contributes to the strengthening of the mechanism of direct protection of human rights and the formation of a legal culture in society.

In this context, the institution of constitutional complaint, introduced in 2016 as an additional mechanism for protecting rights and freedoms, plays a special role. Theoretically, it allows anyone to appeal to the Constitutional Court of Ukraine if the court decision in their case is based on a legal norm that, in the applicant's opinion, contradicts the Constitution. However, in practice, this mechanism has proven to be insufficiently effective.

A significant part of the complaints filed are rejected at the preliminary examination stage due to formal grounds, and the examination process itself is complex, lengthy and often does not give the applicants the expected result. This indicates the need to improve the procedure for submitting and considering constitutional complaints, as well as the need for explanatory work regarding their meaning and implementation mechanism among citizens and specialists.

As I. I. Maryniv rightly notes in the monograph "Constitutional Control in the Republic of Poland", the very existence of the institution of constitutional control is a sign of a democratic rule of law state and should be based on ensuring the mandatory compliance of all legal acts with the Constitution[19]. Ukraine, moving towards European integration, must ensure not only the availability, but also the effectiveness of the instruments provided by the Constitution. Thus, in order to establish the rule of law and transform the Constitution of Ukraine into an effective instrument for protecting human rights, it is necessary to conduct a thorough analysis of how the institution of constitutional control functions, study successful practices — Poland is a good example in this regard — identify shortcomings in practice and implement effective improvement mechanisms.

Ukraine's commitment to becoming a legal state where the rule of law is effectively implemented follows from its obligations to the Council of Europe and the European Union. This significantly impacts the dynamics of Ukraine's European integration processes and will determine its prospects for EU accession.

In this context, the question of the extent to which Ukraine meets the criteria of a state governed by the rule of law is particularly important, both in terms of classical statehood doctrine and in accordance with the Constitution of Ukraine. Article 1 of the Constitution directly

[19]Maryniv I.I. Monograph "Constitutional Control in the Republic of Poland", Kharkiv, Pravo, p. 7. 2021

establishes that 'Ukraine is a sovereign and independent, democratic, social, legal state', thereby proclaiming the principle of a state governed by the rule of law as one of the fundamental principles of the constitutional order. Additionally, Article 8 of the Constitution emphasizes this principle, stating: 'The principle of the rule of law is recognized and operates in Ukraine', and: 'The Constitution of Ukraine has the highest legal force. Laws and other regulatory legal acts are adopted based on the Constitution of Ukraine and must comply with it". At the same time, the proclamation of these provisions raises the reasonable question of what exactly prevents the full implementation of the principles of the rule of law in public administration and justice in Ukraine. Several systemic issues continue to hinder the realization of the ideals enshrined in Articles 1 and 8 of the Constitution. These include judicial system instability, selective law enforcement, corruption within state authorities, political influence on the judiciary and insufficient legal awareness.

One of the key problems is the lack of understanding of the essence of the rule of law. It is often mistakenly equated with the Soviet approach, which prioritized positive law at the expense of natural rights and freedoms. Consequently, the legal system continues to enforce norms that violate fundamental human rights. The problem of implementing the rule of law in Ukraine is particularly acute when it comes to restrictions on the freedom to peacefully assemble, a fundamental human right enshrined in Article 39 of the Ukrainian Constitution. Despite these clear constitutional guarantees, legislation in this area is often applied in a way that contradicts both the Ukrainian Fundamental Law and international standards. Article 39 of the Constitution of Ukraine guarantees the right to peaceful assembly without weapons to everyone. However, there is a discrepancy between this constitutionally enshrined right and the current circumstances. Liability for violating the rules for holding rallies is set out in Article 185-1 of the Ukrainian Administrative Offences Code. This regulatory framework caused numerous violations of the rights of participants in peaceful rallies during the Revolution of Dignity in 2013–2014. Notably, during the student protests in November 2013 and January 2014, which supported Ukraine's European aspirations, law enforcement units, particularly the Berkut, employed excessive force to disperse protesters[20]. This directly contradicted the constitutionally guaranteed freedom of peaceful assembly, as well as international law, particularly Article 11 of the European Convention on Human Rights.

The combination of legislative and practical restrictions, the absence of clear criteria for law enforcement officers' actions, and the lack of proper judicial control resulted in numerous cases of illegal detention, beatings and intimidation of activists. For example, in its ruling on 6 August

[20]Sonya Roy. The history of the Revolution of Dignity through the prism of court cases: the dispersal of Euromaidan on November 30, 2013; LB.ua., 30.11.2024, URL:https://lb.ua/news/2024/11/30/647749_istoriya_revolyutsii_gidnosti_kriz.html, Accessed date: 21.06.2025

2015 in case No. K/800/66882/13[21], the Supreme Administrative Court of Ukraine confirmed the legality of restricting freedom of assembly on the grounds that the lawsuit concerned a counter-assembly.

Also, a violation of the principle of legal certainty, an integral part of the rule of law, is evident in the constant and unpredictable changes to legislation and the ambiguity of its application. Laws and the constitution are often interpreted literally rather than in the context of a holistic system of legal norms, which leads to contradictory conclusions and differences in judicial practice.

For example, legislative changes in Ukraine often occur without proper coordination or consistency. For instance, Article 130 of the Code of Ukraine on Administrative Offences (COAO) was amended twice in July 2020[22], while Article 286-1 of the Criminal Code[23] of Ukraine was decriminalized just two days after coming into effect. These changes have resulted in a lack of unified judicial practice in relation to the imposition of administrative liability for driving while intoxicated.

According to the established case law of the European Court of Human Rights, the concept of 'quality of law' implies that national legislation must be accessible and foreseeable. This means that laws must contain clear rules that instruct citizens on the circumstances and conditions under which state authorities may act affecting their rights, as established in cases such as Oleksandr Volkov v. Ukraine[24]. Furthermore, the ECtHR emphasizes that courts that apply and interpret laws are also responsible for eliminating deficiencies in legislation and legal conflicts, gaps, and ambiguity in interpretation (as stated in the decisions in the cases of Verentsov v. Ukraine[25].

Also, I would like to mention another legal problematic issue. According to the Constitution of Ukraine (Article 19), state authorities and local self-government bodies act exclusively based on and within the limits of the powers defined by the Constitution and laws of Ukraine. The Constitution also guarantees everyone the right to access to justice (Article 55) and protection of their rights and freedoms. Ukraine has a Law “On Administrative Procedure” (No. 2073-20)[26], which establishes general principles for the interaction of state authorities with

[21]Supreme Administrative Court of Ukraine. The case No. K/800/66882/13, the Supreme Administrative Court of Ukraine, 06.08.2015, URL: http://reyestr.court.gov.ua/Review/48303450, Accessed date: 21.06.2025
[22]Verkhovna Rada of Ukraine. The Code of Ukraine on Administrative Offences, No 80731-X, Version 14.06.2025, URL: https://zakon.rada.gov.ua/laws/show/80731-10?lang=en, Accessed date: 21.06.2025
[23]Verkhovna Rada of Ukraine. The Criminal Code of Ukraine, No 2341-III, Version 07.06.2025, URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text, Accessed date: 21.06.2025
[24]ECtHR, Case Oleksandr Volkov v. Ukraine (no. 21722/11), 2013, URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}, Accessed date: 21.06.2025
[25]ECtHR, CASE OF VYERENTSOV v. UKRAINE (Application no. 20372/11), 2013, URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-118393%22]}, Accessed date: 21.06.2025
[26]Verkhovna Rada of Ukraine. The Law “On Administrative Procedure”, No. 2073-IX, Version 15.11.2024, URL: https://zakon.rada.gov.ua/laws/show/2073-20#Text, Accessed date: 21.06.2025

individuals and legal entities when providing administrative services. The law aims to ensure transparency, predictability and equality in access to administrative procedures. However, in practice, most authorities continue to independently determine the rules of interaction through additional departmental instructions and regulations, which often expand their powers and mainly focus on the rights of the authority, rather than the rights of the individual. The obligations of applicants are spelled out in detail, while officials have minimal obligations to justify decisions and meet deadlines. This creates an imbalance and leads to the actual restriction of the rights of citizens and businesses, especially in conditions of low legal culture among the population. Many people do not know their rights in administrative procedures and mechanisms for their protection, which complicates the effective appeal of decisions of authorities.

Addressing the issue of inadequate administrative procedures necessitates a comprehensive approach grounded in the principles enshrined in the Constitution of Ukraine and international human rights standards. Firstly, the implementation of the Law 'On Administrative Procedure' must be strengthened to ensure strict compliance by the authorities with the principles of legality, transparency and fairness. The practice of adopting internal instructions that expand the authorities' powers without proper legislative basis must be prohibited. To establish clear and consistent rules, it would be beneficial to develop and implement an Administrative Procedure Code, which would define the rights and obligations of the parties involved, establish mechanisms for substantiating decisions, and set deadlines for their adoption. The code should also set out effective out-of-court procedures for appealing administrative decisions to guarantee the right to a fair hearing, as set out in Article 6 of the European Convention on Human Rights. Raising the level of legal awareness among the population and civil servants is an integral part of this process. To this end, broad educational programs must be introduced to inform citizens about their rights in administrative procedures. Officials must also undergo regular training to ensure they comply with the law and respect human rights. One important tool for achieving this is the use of international educational platforms, particularly the Council of Europe's free online HELP platform[27], which provides training courses on human rights and administrative law.

Additionally, transparent, accessible and effective administrative appeal mechanisms must be guaranteed to allow for a prompt and high-quality response to violations of citizens' rights. To this end, the independence and effectiveness of bodies by exercising administrative control must be supported. A combination of clear legislative norms increased legal awareness, and compliance with international human rights standards will therefore create conditions for the balanced

[27]European Union. Human Rights Education for legal professions, official website, URL: https://www.coe.int/en/web/help/home, Accessed date: 21.06.2025

protection of citizens' rights in administrative procedures, in line with the Constitution of Ukraine and the state's international human rights obligations.

It is also important to consider the growing influence of "soft law" on Ukraine's legal and political transformation. Recommendations, conclusions and other documents of advisory and consultative bodies of international organizations, in particular the European Commission for Democracy through Law (Venice Commission), have become important guidelines in the process of improving national legislation and law enforcement practice in Ukraine. It is particularly important that the conclusions of this Commission on Ukrainian draft laws and reforms have become a kind of marker for the conformity of state changes with European standards of democracy, human rights and the rule of law. Thus, Ukraine's cooperation with the Venice Commission contributes not only to the implementation of European values in the domestic legal system, but also to increasing confidence in the Ukrainian legal system in the international arena. Ukraine's cooperation with the Venice Commission began almost immediately after the declaration of independence, but it was not until 1996 that Ukraine became a party to the European Commission's Partial Agreement 'For Democracy through Law' and was granted member status[28].

The European Commission for Democracy through Law has developed universal approaches to the assessment of constitutional processes, which make it possible to determine the level of legitimacy, democracy and fairness of public administration. Since Ukraine's independence, cooperation with the Venice Commission has been intensive and has become an important factor in the process of constitutional modernization of the state. At the same time, the use of soft law practices in Ukraine remains rather limited. The Venice Commission is working on the development of universal approaches to the assessment of constitutional processes, which makes it possible to determine the level of legitimacy, democracy and fairness of public administration bodies. The recommendations on the Constitutional Court of Ukraine[29] are part of these processes and confirm the importance of ensuring the political neutrality and independence of judges to avoid political influence.

According to the Key Conclusions of the Commission of the 2023 Report on Ukraine[30], it is safe to say that in Ukraine, despite the war, significant progress has been made in reforming the judicial system, in particular through the resumption of the work of the High Council of Justice

[28]Verkhovna Rada of Ukraine. On Ukraine's accession to the Partial Agreement on the European Commission "For Democracy through Law": Law of Ukraine of November 22, 1996. No. 5. Art. 31, 1997. URL: https://zakon.rada.gov.ua/laws/show/547/96-%D0%B2%D1%80#Text, Accessed date: 21.06.2025

[29]Venice Commission. European commission for Democracy through Law, Ukraine, CDL-AD (2023)027, Strasbourg, 9 October 2023, URL: https://www.coe.int/en/web/civil-society/democracy-through-law-venice-commission, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)027-e, Accessed date: 21.06.2025

[30]EEAS, Key Conclusions of the Commission of the 2023 Report on Ukraine, 2023 URL: https://www.eeas.europa.eu/delegations/ukraine/основні-висновки-доповіді-2023-р-щодо-україни_uk?s=232, Accessed date: 21.06.2025

and the introduction of transparent competitions for judges, which are still ongoing. Detailed information can be found on the website of the High Qualification Commission for Judges at https://www.vkksu.gov.ua/[31].

These reforms continue in parallel with the fight against corruption and the protection of human rights. However, many issues remain to be resolved, and the modernization process will remain complex and protracted, due to the war situation and limited opportunities for full implementation of reforms.

In the context of judicial reform, co-operation with international bodies, particularly the International Criminal Court, in the investigation of war crimes committed by the Russian government and military is also of great importance. This international support not only helps to ensure justice in the country but also strengthens international relations and increases confidence in the Ukrainian state in the global context.

The 33rd Report of the Office of the United Nations High Commissioner for Human Rights, which covers the period from 24 February to 15 March 2022, records several violations of international humanitarian law by the Russian Federation's armed forces in Ukraine. The UN report[32] also emphasis's the importance of involving international mechanisms in documenting war crimes. The International Criminal Court began a formal investigation into the situation in Ukraine on 2 March 2022. Ukraine has, for its part, twice submitted declarations recognizing the ICC's jurisdiction — once regarding the Euromaidan events and again regarding subsequent Russian aggression. Furthermore, in March 2023, the ICC issued arrest warrants for Vladimir Putin and Maria Lvova-Belova, the Russian Commissioner for Children's Rights, for the illegal removal of Ukrainian children from temporarily occupied territories.

In the context of European integration, strengthening democratic institutions and the rule of law, I hope that my paper will be interesting for studying for those who are interested in changing our Constitution to the Constitution in Action.

1.2. The Constitution of Ukraine: From historical foundations to the instrument of national identity and unity

The constitutional process in Ukraine, which lasted several decades, testified to the desire of society and the state to establish democratic standards in which human rights occupy a central

[31]High Qualification Commission for Judges, official website. URL: https://www.vkksu.gov.ua/, Accessed date: 21.06.2025
[32]United Nations in Ukraine, Report about human rights in Ukraine, 01.08.2021- 31.01.2022, URL: https://ukraine.un.org/sites/default/files/2022-04/2022-03-23%20OHCHR%2033rd%20Report%20FINAL-UKR.pdf, Accessed date: 21.06.2025

place. Understanding the significance of the Constitution as a guarantor of human rights is impossible without analyzing the historical development of constitutional processes, the content of the Constitution of Ukraine and its implementation in practice.

In modern Ukrainian constitutional and legal science, there is no single, generally accepted definition of the concept of 'constitutional process'. As Mykola Tomenko[33], a prominent historian, Doctor of Political Sciences and Professor at the Taras Shevchenko National University of Kyiv, correctly notes, writing draft constitutions or amendments to them was one of the key tasks of the Ukrainian elite at almost all stages of the formation of the Ukrainian state. Indeed, all of Ukraine's constitutional drafts available to historians and political scientists today serve as a means of legitimizing the state. This is why, throughout Ukrainian history, the constitution has always had a political, ideological, or worldview-ideological character rather than the character of a classical fundamental law or regulatory act of a higher power. Accordingly, political subjects also perceive the constitution primarily as a political document and only secondarily as a legal one. M. Tomenko observes that political parties and other stakeholders in the constitutional process frequently propose constitutional amendments without fully considering historical experience and past errors. Consequently, political motives take precedence, while legal considerations take a back seat. Constitutional evolution in Ukraine has often not acted as a process of establishing a stable fundamental law for the state and its citizens, but rather as an element of ideological confrontation to determine the national direction. The author therefore concludes that, while a significant level of political legitimacy and public support was achieved during the adoption of the Constitution of independent Ukraine and subsequent amendments to it, the level of legal legitimacy, particularly regarding substance, remained insufficient. We can only expect the Constitution to gradually evolve from a purely political and ideological act into a legal document that performs a regulatory function in the state if the institutional and legal component prevails over the political one. This is precisely the conclusion that both Ukraine's historical path and the global development of constitutionalism lead us to. I completely agree with the author's statements in this article, and I view that this is indicative of the problems with the constitutional process in Ukraine and the need to transform it into an effective legal instrument.

Even during the Hetmanate, the foundations of state thinking were laid, later transforming into the political and legal principles of Ukrainian constitutionalism. Bohdan Khmelnytsky had an ambitious program for establishing Ukrainian statehood. From the outset of his tenure as Hetman, he took the lead in resolving key foreign policy issues, ranging from the establishment of relations

[33]Tomenko Mykola. Personal website, Articles, History of the Ukrainian Constitution, 11.11.2009, URL: https://tomenko.ua/category/statti/, Accessed date: 21.06.2025

with neighboring states to the control of shipping on the Black Sea. Relations with Poland and Muscovy remained central. Key international documents were concluded during his reign, including the Treaty of Zboriv in 1649 and the Treaty of Pereyaslav in 1654. The latter recognized the autonomous status of the Cossack state in terms of internal administration, the judiciary, foreign relations, and finances. This formally established vassal dependence on Moscow, though this was never fully realized in practice.

Undoubtedly a landmark document in the history of Ukrainian constitutionalism, the 'Pacts and Constitutions of Laws and Liberties of the Zaporozhian Army' was an agreement concluded between Hetman Pylyp Orlyk and the Cossacks in 1710. It established the principle of separation of powers, defined the state's territorial borders, proclaimed Orthodoxy as the dominant religion and advocated church autocephaly. Influenced by the ideas of Western parliamentarism, this document is considered the first modern constitution in Europe.

In this regard, I agree with Mykola Tomenko's approach of analyzing the constitutional process in Ukraine from the perspective of the Hetmanate era. I agree with this approach because, in my opinion, it is only through the prism of the Hetman era that one can truly grasp the depth of the Ukrainian people's national liberation struggle, their political culture and historical experience. These are organically connected with the challenges of the present and the formation of the future of an independent Ukraine.

During the 19th century, the idea of Ukrainian statehood did not disappear; rather, it developed through the work of thinkers and public and political figures. The theoretical foundations laid by the 'Novgorod-Siversky Patriotic Circle' and Ukrainian Freemasons — particularly members of the Poltava lodge 'Love for the Truth' — were further developed by the Cyril and Methodius Society. This society formulated the idea of building a just, fraternal Slavic society.

The political and legal discourse paid special attention to the work of Georgy Andruzky, author of Sketches of the Constitution of the Republic, and Mykhailo Drahomanov's concept of a federative 'Free Union'. A key figure in constitutional development was Mykhailo Hrushevsky, whose 1905 project centered on representative government and national-territorial autonomy.

Meanwhile, a more radical, state-oriented trend was emerging within the movement, represented by Mykola Mikhnovsky, who drafted a constitution for an independent, presidential Ukraine.

The period of liberation struggles (1917–1920) saw the peak of attempts to institutionalize Ukrainian statehood through constitutional law. From the Universals of Central Rada to the draft Statute on the State Structure of the UNR, the principles of republicanism, separation of powers

and citizens' rights and freedoms were at the center of attention.

A notable event during this period was the Hetmanate of Pavlo Skoropadsky. Despite challenging circumstances, it established the basis for the state's institutional development. The constitutional documents of the Directory and the ZUNR, as well as the projects of scholars such as Otto Eichelmann, testify to the continuous search for a Ukrainian political and legal model.

From 1917 to 1920, the Ukrainian People's Republic (UNR) and the Western Ukrainian People's Republic (ZUNR) emerged, and they voluntarily unified into a single constitutional state. The purpose of creating such a state and its main tasks and goals corresponded with pan-European democratic developments at the time. Article 1 of the 1918 Constitution of the UNR stated: "Having restored its state law as the Ukrainian People's Republic, for the better defense of our land, for a more reliable provision of rights and freedoms, and for the protection of the culture and well-being of its citizens, it has proclaimed itself a sovereign state, independent and free."

During the Soviet occupation, the Ukrainian constitutional tradition was replaced by ideologically driven legislation that, although it took the form of constitutions, remained essentially declarative and politically motivated. The 1919, 1929, 1937 and 1978 constitutions formally established the state system, but did not reflect the true interests of the people. The real mechanisms of power were concentrated in the hands of the party elite. For instance, the 1978 Constitution enshrined the right of the Ukrainian SSR to secede from the USSR, but this was merely a fig leaf. This was akin to the proclamation of the creation of the People's Commissariat of Foreign Affairs and Defense in the Ukrainian SSR in 1944, which symbolized the Ukrainian SSR's external sovereignty and enabled it to join the UN. This provided additional votes for the USSR in UN voting, but it never began to function in practice, as the republics' UN membership subsequently became irrelevant.

In line with the official Soviet stance, intellectual work on new models of statehood continued within the émigré community. Despite its authoritarian nature, Mykola Stsiborsky’s 1939 constitutional project reflected the desire to create a self-sufficient, nationally oriented state.

Documents from the final years of the USSR and the Ukrainian SSR were of great importance to the overall process of constitutional transformation in Ukraine. The most significant of these documents were the "Declaration on the State Sovereignty of Ukraine" (July 16, 1990) and the "Concept of a New Constitution of Ukraine" (June 16, 1991). These documents clearly demonstrated the Ukrainian people's desire to restore their national statehood and transform the Ukrainian SSR, which was previously an administrative and practically inseparable component of the Soviet "evil empire," into an independent and democratic state.

As Ukraine's proclamation of independence in 1991 approached, the need for a new

constitution to establish a legal state increased. The 1990 Declaration of State Sovereignty marked the beginning of a new era in Ukrainian constitutionalism, spanning the period up to the adoption of the 1996 Constitution of Ukraine and its subsequent amendments.

The "Concept of the New Constitution of Ukraine" stated that the new constitution was to be based on the Declaration on the State Sovereignty of Ukraine to ensure, develop, and specify its provisions. The ideals of the rule of law were to permeate the entire constitution, which was to focus on the highest social value of man, his rights and freedoms, and their guarantees. The focus of constitutional regulation was to be the relationship between citizens, the state, and society. The Constitution was to prioritize universal human values, ensure social justice, consolidate the democratic and humanistic choices of the Ukrainian people, and demonstrate Ukraine's commitment to generally recognized international legal norms. The new Constitution's norms were to be enforceable, and the Constitution itself was to be stable, with a clear mechanism for change and amendment.

The history of the adoption of the Constitution of Ukraine in 1996 and the subsequent stages of its development testify to the gradual development of the understanding of human rights as the basis of the state system. As noted in the "Anthology of the Constitutional Process in Modern Ukraine"[34], the modern constitutional process began with amendments to the Constitution of the Ukrainian SSR of 1978, aimed at democratizing public life, in particular through the proclamation of the multi-party system, the abolition of the leading role of the CPSU (Communist Party of the Soviet Union in 1988) and the recognition of the institution of private property.

On 28 June 1996, at the longest session in the history of the Ukrainian parliament, the Verkhovna Rada of Ukraine adopted the basic law of the state - the Constitution of Ukraine. "We understood either we will complete the adoption of the Constitution without leaving the Verkhovna Rada, or there will be no Constitution in Ukraine" - Mykhailo Syrota , a Deputy of Ukraine of the 2nd, 3rd and 6th convocations, who is also called the "Father of the Constitution", recalled that night. As one of the main co-authors, he presented the draft constitution from the rostrum of the parliament.

The adoption of the Declaration of State Sovereignty of Ukraine in 1990 and the Act of Independence of Ukraine in 1991 ushered in a new constitutional tradition centered on the person and his or her rights. The drafting of the new constitution, which began in 1990, aimed to implement the ideas of the rule of law, democratic governance and the rule of law, in line with European human rights standards.

[34]Razumkov center, «Anthology of the Constitutional Process in Modern Ukraine", Kondrad Adenauer Stiftung, p.12, 2017, URL: https://razumkov.org.ua/uploads/article/2017-antologiya_kons_processu.pdf, Accessed date: 21.06.2025

The constitutional process was accompanied by the active participation of the public, experts and scholars, which made it possible to create a document that meets the best international practices. It is particularly important that during the discussion of the draft Constitution, numerous proposals to strengthen the guarantees of human rights and freedoms were considered.

A brief analysis of the changes to the current Constitution of Ukraine reveals that the de-jury nine amendments, but de-facto seven have been made since the adoption of the first Constitution of an independent Ukraine on 28 June 1996. From 1 January 2006, the changes of 8 December 2004 came into force because of the political reform that transformed the system of power into a parliamentary-presidential one. However, on 30 September 2010, the Constitutional Court cancelled these changes, reinstating the 1996 version which strengthened the President's powers. On 4 February 2011, amendments were adopted to Article 98 regarding the powers of the Accounting Chamber. On 6 October 2013, further amendments were made to ensure the independence of judges. However, these steps were taken amid a legitimacy crisis. Following the Revolution of Dignity, on 22 February 2014, parliament restored the 2004 version of the Constitution, which was confirmed on 2 March 2014. On 30 September 2016, significant changes to the justice system aimed at judicial reform came into force. On 21 February 2019, Ukraine’s strategic course for joining the EU and NATO was enshrined in the Constitution. Finally, on 1 January 2020, changes came into force that abolished the lawyers' monopoly on representation in certain categories of court cases. This evolution demonstrates the dynamics of the Ukrainian constitutional process in response to political crises, challenges to sovereignty and the need for institutional transformation.

It is important to note that there are seven formally recorded amendments to the text of the Constitution of Ukraine that are legally effective. These are instances in which the text of the articles of the Constitution was directly amended by the Law of Ukraine on Amendments, in accordance with Articles 155 or 156 of the Constitution. Some dates are presented as amendments to the Constitution of Ukraine but are not legal changes to the text of the Basic Law. For instance, January 1, 2006 is frequently cited as the date of the 'new edition', but this is merely the date on which the changes adopted on 8 December 2004 (the so-called political reform – Law No. 2222-IV) came into force, not a separate legislative innovation. 4 February 2011 is associated with an attempt to reverse the 2004 reforms. However, this was merely a political decision and a series of public statements, with no actual changes made to the text of the Constitution. Similarly, on 6 October 2013, when Yanukovych’s Constitutional Assembly was preparing draft amendments, none of them were legally adopted; therefore, they are not considered amendments. The events of

2 March 2014, when the 2004 version of the Constitution was restored, did not create a new version but merely reinstated the previous one, so this is not considered a separate change but rather a return to the original text. Finally, January 1, 2020 is often listed as another change, but it is actually only the date on which the changes were adopted on August 30, 2019 regarding the abolition of the lawyer monopoly came into force. These changes are already counted among the seven main ones. Thus, there are exactly seven legally formalized amendments to the text of the Constitution of Ukraine. These are: the adoption of the Constitution on 28 June 1996; the political reform of 8 December 2004 (Law No. 2222-IV); the Constitutional Court's decision to repeal this reform on 30 September 2010; the return to the 2004 version on 21 February 2014; the judicial reform approved on 2 June 2016; the consolidation of the strategic course towards the EU and NATO on 7 February 2019; and finally, the abolition of the lawyer monopoly on 30 August 2019 (which entered into force on 1 January 2020). It was these seven changes that were officially formalized in the form of laws amending the Constitution of Ukraine. The remaining events are either stages of the political process or consequences of changes that have already been adopted, so they are not considered as separate revisions.

All these changes can be found on the official website of Ukraine's normative legal acts https://zakon.rada.gov.ua/laws, including the normative act of the Constitution of Ukraine, if desired.

I would like to mention some additional aspects of the amendments that you will find below. On 7 February 2019, Parliament enshrined in the Basic Law the country's course towards the European Union and NATO. These amendments provide for the irreversibility of the state's strategic course until full membership of the European Union and the North Atlantic Alliance. They added to the preamble of the Constitution words about the affirmation of the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic course. At the same time, Article 102 of the Constitution was amended to include the phrase that the President is the guarantor of the implementation of the state's strategic course until Ukraine's full membership in the European Union and NATO. On 1 January 2020, the Law "On Amendments to Article 80 of the Constitution of Ukraine Concerning the Immunity of Deputies" came into force: deputies can now be prosecuted, detained or arrested without the consent of the Verkhovna Rada. Previously. However, at the same time, Article 80 of the Constitution retains the provision that deputies are not legally liable for the results of votes or statements made in Parliament and its bodies, except for liability for insult or defamation.

I would also like to note that the numerous amendments to the Constitution of Ukraine, as well as the discrepancy between the number of formally enshrined changes and actual political

transformations, indicate a deep-seated problem in the constitutional process. The amendments were often not logically connected to each other and were adopted under pressure from the political situation rather than as part of a holistic vision for constitutional development. Consequently, the Constitution of Ukraine has lost its coherence and has become an inconsistent document in which individual provisions contradict each other or do not reflect the actual functioning of government institutions. This situation requires not only technical updating, but also fundamental reconsideration of the Constitution's role as the foundation of national law, order and unity.

The implementation of constitutional guarantees of human rights requires effective mechanisms for their protection. The Constitution of Ukraine establishes a system of bodies and procedures for the protection of human rights. In particular, the judiciary, the Constitutional Court of Ukraine and the Human Rights Commissioner of the Verkhovna Rada of Ukraine are key institutions ensuring constitutional supervision and protection of citizens' rights.

The introduction of the right to an individual constitutional complaint was an important step in increasing the effectiveness of human rights protection at the constitutional level. This theoretically allows citizens to appeal directly to the Constitutional Court of Ukraine in cases of violation of their rights by laws or other regulatory acts.

Unfortunately, the right to file a constitutional complaint in Ukraine remains largely theoretical rather than a practical mechanism for protecting human rights. Although the relevant amendments to the judiciary, which enshrined the right of individuals to make constitutional complaints, were made to the Constitution in 2016, the Constitutional Court of Ukraine was not ready to implement them. It was only in 2017 that the necessary amendments were made to the Law 'On the Constitutional Court of Ukraine', which regulates the procedure for considering such complaints. Secondly, individuals cannot apply directly to the Constitutional Court; they must first exhaust all avenues of judicial protection in general courts. Thus, filing a constitutional complaint effectively constitutes a fourth judicial instance before applying to the European Court of Human Rights and does not constitute direct action as required by Article 8 of the Constitution of Ukraine. This creates significant barriers for citizens when it comes to exercising their constitutional right to effective protection.

In the modern conditions of globalization, digitalization, development of information technologies and aggravation of global and national security challenges, the climate changing there is an objective need to revise the constitutional provisions of Ukraine. New public demands related to the protection of personal data, cybersecurity, environmental rights, access to digital services and ensuring inclusiveness require a corresponding update of constitutional norms. The Constitution should be a living instrument capable of responding adequately to the changes of the

modern world, while preserving the fundamental principles of human rights and the rule of law, as well as Ukraine's national interests.

In my opinion, the modernization of the Fundamental Law should be accompanied by a systematic review and alignment of Ukraine's entire regulatory and legal framework with constitutional provisions. Attention should be paid to aligning legislation with international standards, especially European ones, as this is crucial for Ukraine's integration into the EU.

Additionally, it is crucial to consider the new challenges Ukraine faces due to war, threats to national security, digitalization, the implementation of the green deal and new governance models. To conclude, the principle of Ukrainecentrism — the prioritization of national interests — should be enshrined in the Constitution, alongside a renewed social contract between the state and its citizens based on mutual responsibility, trust, and a commitment to protecting the rights, freedoms, and dignity of citizens.

To realize this vision, the Constitution must evolve from a traditional legal document into an effective instrument of national unity and self-identification. In the face of ongoing internal and external challenges, including war and social fragmentation, the Fundamental Law must become a shared foundation reflecting the Ukrainian people's values, historical memory, and aspirations. This requires more than just an update to the legal norms; it also requires a nationwide dialogue between the state and its citizens, based on trust, inclusiveness, and shared responsibility. In this way, the Constitution can serve as a legal and moral guide, contributing to the strengthening of democracy in Ukraine and its integration into the European community.

In this context, it is quite appropriate to agree with the theses of former Deputy Prime Minister Yulia Tymoshenko, voiced during the forum" Ukraine's New Course: New Opportunities for Everyone: Strategy for Innovative Development (2018)"[35], that we, Ukrainians, finally need to realize: in a cruel and competitive global world, in order to survive, it is necessary to cooperate with all nations on a mutually beneficial basis, but at the same time - to rely exclusively on ourselves: on our own strength, national intelligence, resources, economy, banking system and, most importantly, on our people. And to act - without expecting handouts and without asking for permission from the world. Only such an approach can ensure Ukraine's future as a truly independent, strong and self-sufficient state.

That is why there is an urgent need to enshrine in the Constitution of Ukraine the principle of Ukrainecentrism - a philosophy of state development, where national interest, self-sufficiency and the priority of Ukrainian identity become the basis of state policy. Ukrainecentrism is not

[35]Tymoshenko Yulia, Ukraine's New Course: New Opportunities for Everyone: Strategy for Innovative Development, under the general editorship of Y.V. Tymoshenko, V.A. Lomakovich // Under the scientific editorship of Doctor of Economic Sciences T.E. Unkovskaya (2018), p.5, URL: https://www.calameo.com/books/003168372368a50d6b510, Accessed date: 21.06.2025

isolationism, but on the contrary - a strategically balanced model of interaction with the outside world, based on one's own subjectivity and strength. Such an approach not only strengthens national unity but also forms a healthy ambition: joining the EU and NATO not as a supplicant, but as a partner ready for joint responsibility. Accordingly, the Constitution should reflect a new social agreement - focused on the sustainable development, stability, dignity and future of the Ukrainian nation.

In the modern legal system, particularly in a European context, human dignity is recognized as the primary and unconditional basis of the entire legal order. Its inviolability must be more than just a value; it must also be a real source of legal norms and state obligations. The Constitution of Ukraine should turn back to the person, ordinary person. Without this, it is impossible to establish a fully functioning legal state where every citizen feels protected legally, morally and existentially. Respect for human dignity can form the basis of a new social consensus, fostering mutual responsibility, trust, and solidarity. The constitution, from my point of view, should guarantee rights of the nation's identity, providing a unifying force for citizens in times of trial and contributing to the restoration of justice and the strengthening of Ukrainian statehood.

It is also important to emphasize that national wealth, especially land, is the exclusive property of the Ukrainian people. Land cannot be treated as a commodity or resource without taking national interests into account, because it is a source of life, cultural identity and sustainable development. Currently, significant inconsistencies exist between these fundamental postulates and the legislation on land reform. The Law on the Land Market does not align with the spirit or letter of the Constitution, as it permits the concentration of land resources in the hands of individuals or foreign legal entities. This threatens the people's right to their own wealth and this law conflicts with the Constitution of Ukraine. So, the constitutional consolidation of the principles of Ukrainian centrism is very important in the, the protection of national wealth, and human dignity.

1.3. The Constitution as an instrument of National Power - between Soft power, Legal efficiency and Democratic openness

The constitution should be viewed as both a legal system and a cultural phenomenon reflecting the nation's values, historical memory, and collective identity. More broadly, constitutional law acts as a bridge between legal institutions and cultural reality.

As Peter Häberle notes, a constitution is not merely a legal text containing norms and rules binding upon the state and its citizens. It is also part of a society's culture, reflecting its historical experience, values, traditions, and conceptions of justice, freedom, and the future. It serves as a means

of self-representation for the people and, simultaneously, as a foundation for the society's further development. Therefore, a constitution should be viewed not only as a legal document but also as a cultural phenomenon that links law with societal values and historical experience[36].

In pluralistic societies, it must take cultural diversity into account and transform it into legal norms and political principles. The cultural dimension of constitutionalism emphasizes that the constitution is not merely a set of legal norms, but rather a living narrative that shapes national power through shared values and recognition. I was particularly struck by the Professor's Vasco Pereira da Silva citation of Prieur's statement that there is a kind of 'love affair' between law and culture, which helps us to understand the depth of their interaction[37].

According to Sabino Cassese, a constitution does not emerge in isolation from society but is the product of historical experience, political ideas, and the evolution of the political community itself. In this sense, it can be viewed as the outcome of a process wherein the experience accumulated by society and the ideas formed within it find normative expression and are transformed into the fundamental rules of coexistence. This approach complements the understanding of the constitution as culture, as it highlights its connection not only to society's cultural heritage but also to the process of shaping shared political and legal guiding principles[38].

For Ukraine, a country with a rich history and a complex cultural landscape, as well as challenges of statehood, this perspective is of the utmost importance. The Ukrainian Constitution should unite the country's diverse cultural groups, contribute to the consolidation of national identity and preserve democratic values and human rights. In the context of modern challenges such as war, external threats and internal transformation, the constitution's role as a living instrument of national power becomes even more relevant.

By its nature, the Constitution is not only a legal act, but a social contract that forms the foundations of political organization, determines the rules of coexistence and outlines the boundaries and responsibilities of state power. In this sense, the Constitution should be a living instrument of national power - a source of "soft power" through the consolidation of values, identity and rights, a mechanism of legal efficiency and the basis of democratic openness. As Thomas Paine rightly wrote, " The Constitution is the property of the people, not of those who govern"[39].

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[36] Häberle, Peter. "El Estado constitucional europeo." Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional, núm. 2, 2000, pp. 88-90. DOI: 10.22201/iij.24484881e.2000.2.5581

[37]Vasco Pereira da Silva, Law Faculty, University of Lisbon, Lisbon, Portugal, Culture of the Constitution and the Culture in the constitution, Springer Nature Switzerland AG 2021, Encyclopaedia of Contemporary Constitutionalism, p.1, 2021, URL: https://doi.org/10.1007/978-3-319-31739-7_2-1, Accessed date: 21.06.2025

[38] Cassese, Sabino. "L'officina di idee" della Costituzione. Giornale di storia costituzionale, no. 36/II, 2018, pp. 27–31. DOI: 10.63277/gsc.v36i.4557.

[39]Payne T. Human Rights. Trans. from English. Igor Savchak. Lviv: Lithopis, p.182, 2000, URL: https://shron1.chtyvo.org.ua/Pein_Tomas/Prava_liudyny.pdf? Accessed date: 21.06.2025

The effectiveness of constitutionalism is also inseparable from the democratic principle. As Ernst-Wolfgang Böckenförde emphasizes, democracy is grounded in popular sovereignty, while the exercise of state power is organized through representative institutions. This understanding demonstrates that constitutional democracy requires not only formally established institutions but also a constitutional framework capable of translating popular sovereignty into legitimate procedures for the exercise of state power[40]. The effectiveness of constitutional democracy thus depends on a clear distinction between the constitutional system—which establishes the fundamental principles and limits of public authority—and the institutions of power that exercise this function.

Clearly, the terms 'constitution' and 'government' are often used separately because they have different meanings. I agree with Thomas Paine, that "The constitution should be a document of the people, defining the boundaries and rules of how power is exercised, rather than a document of the government. Without a constitution, a government is a power without legitimacy or the right to act"[41].

As Peter Häberle aptly argues, in a democratic constitutional state, citizens and the people, grounded in human dignity, constitute the "anthropological and cultural preconditions" of constitutionalism, since it is ultimately the people who give themselves their Constitution[42].

In the modern world, it is important to consider the constitution as an instrument of national power, combining elements of "Soft Power" (soft power), Legal efficiency (legal efficiency) and Democratic openness (democratic openness). In my opinion, it is important to understand the meaning of each component in order to analyze the state of affairs in the constitutional process of Ukraine according to these components and try to propose improvements in them in order to establish a new social contract between the citizen and Ukraine in accordance with today's challenges and realities.

The term 'soft power' was first introduced in 1990 by Joseph Nye in Soft Power: The Path to Success in World Politics[43]. He argued that a state's influence in international politics is based not only on military or economic power, but also on the attractiveness of its ideas, culture, political values and institutions. If the constitution can guarantee human rights, support the rule of law and establish a fair system of government and political freedom, it becomes a source of soft power

[40] Böckenförde Ernst-Wolfgang. Democracy as a constitutional principle. Handbuch des Staatsrechts der Bundesrepublik Deutschland, vol. II, 1995, pp. 887–891, 1995

[41]Payne T. Human Rights. Trans. from English. Igor Savchak. Lviv: Lithopis, p.176, 2000, URL: https://shron1.chtyvo.org.ua/Pein_Tomas/Prava_liudyny.pdf? Accessed date: 21.06.2025

[42] Häberle, Peter. "El Estado constitucional europeo." Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional, núm. 2, 2000, p. 88. DOI: 10.22201/iij.24484881e.2000.2.5581

[43]Nye, Joseph S. Jr., "Get Smart: Combining Hard and Soft Power", Foreign Affairs, July/August 2009, URL: https://www.foreignaffairs.com/articles/2009-07-01/get-smart. Accessed date: 21.06.2025

because it inspires trust among its citizens and international partners.

Soft power is the ability to achieve the desired result through the attractiveness of a state's culture, political values and foreign policy, rather than through coercion or financial reward. Conversely, hard power is based on pressure ('push'), while soft power is based on attraction ('pull'). The defining components of soft power are: - a culture that arouses interest and sympathy outside the country; political ideas and values that are perceived as fair and moral; foreign policy that is considered legitimate by the international community. In this context, the constitution plays a key role in providing the state with soft power. To fulfil this role, it must reflect and consolidate real mechanisms for implementing value systems, rights and freedoms, as well as a model for organizing power that is attractive not only to citizens within the country, but also to the international community. The US Constitution is an example of this, having become a symbol of democracy, human rights, and the rule of law, thereby strengthening the United States' soft power in the world. This is particularly important for Ukraine. A successful constitutional model would form a positive image of the state, strengthen the trust of international partners and strengthen national identity. The Ukrainian Constitution, adopted in 1996, has already fulfilled its historical purpose: at a constitutional level, it secured the restoration of Ukrainian statehood and the people's aspiration for independence — after all, we modern Ukrainians are the heirs of the Ukrainian People's Republic — and it also laid the groundwork for the transformation of the post-Soviet country into an independent, European Ukrainian state. Therefore, the current Constitution of Ukraine undoubtedly requires a deep update in accordance with modern challenges and strategic interests. A transparent, inclusive and open constitutional process must be created that considers the interests of civil society and is based on clear democratic values. Such a process would allow us to turn the constitution into a living document representing the will of the Ukrainian people, thereby strengthening the internal legitimacy of the state and increasing the effectiveness of institutions, present Ukraine as a modern, legal and democratic state on the world stage.

Thus, the Constitution should not only form the legal basis for the functioning of the state but also become a powerful instrument of influence — soft power — that shapes Ukraine's international identity, attractiveness, and capacity to independently exert influence in the global arena.

Legal effectiveness is the ability of the constitution to establish stable, predictable and effective rules with formal and real-world impact on political practice, legislative activity and law enforcement.

In this context, the relationship between the Constitution and the system of sources of law is of particular importance. As Francisco Balaguer Callejón argues, the Constitution occupies a

fundamental position within the legal order, as it provides the framework within which other sources of law are created, interpreted, and applied. Consequently, the Constitution does not operate in isolation from ordinary legislation and other legal norms; rather, it defines the fundamental conditions under which these norms acquire force and function within the legal system. This approach allows for an understanding of legal effectiveness that extends beyond the mere formal binding force of constitutional provisions. While the Constitution may formally establish rights, institutional competencies, and procedural rules, their practical effectiveness depends on how these provisions are integrated into the broader legal system and applied in legislative and institutional practice. Therefore, coherence between constitutional norms and other sources of law is essential for ensuring that constitutional principles exert a real influence on the functioning of the state. Where constitutional rules effectively structure the creation and application of ordinary law, they can foster greater stability and predictability within the legal order. At the same time, this approach underscores the importance of constitutional reform. Amendments to the Constitution can affect not only specific constitutional provisions but also the interrelationships between various sources of law and the overall structure of the legal system. Thus, constitutional reform can be viewed as a means of adapting the legal order to new political and social circumstances while preserving the fundamental principles and coherence of the constitutional system. In this sense, the effectiveness of a constitution depends on its ability to remain both authoritative and responsive to changing conditions, ensuring that constitutional principles continue to shape legislative activity, political practice, and the administration of justice[44].

The effectiveness of a constitution is thus closely linked to the coherence, hierarchy, and logical organization of the legal system as a whole. Constitutional effectiveness also depends on the constitutional order's ability to integrate a diverse political and social community. Gertrude Lübbe-Wolff's analysis of homogeneity and integration challenges the assumption that democratic constitutionalism requires a culturally homogeneous population. Instead, the issue of integration becomes central to the effective functioning of a democratic constitutional state, as the Constitution's ability to unite diverse social and cultural groups around shared legal and political principles largely determines its practical effectiveness[45].

This structural dimension of legal effectiveness was further developed by Hans Kelsen, who emphasized that for a legal system to be legitimate and effective, it must be formally and logically structured. In the 'Pure Theory of Law', A.Marmor [46] emphasized that, in order to be

[44] Balaguer Callejón, Francisco. "Fuentes del Derecho y reforma de la Constitución." Revista de Derecho Político, no. 36, 1992, pp. 407–418. DOI: 10.5944/rdp.36.1992.8589.
[45] Getrude Lübbe-Wolff. Homogenous People – on the Postulates of Homogeneity and Integration. Konrad Adenauer Stiftung. p.124-127, December 7, 2020
[46]Andrei Marmor. The Pure Theory of Law, The Stanford Encyclopaedia of Philosophia, first published Mon Nov 18, 2002;

legitimate and effective, a legal system must be formally and logically constructed. In this context, the constitution plays the role of Grundnorm — the fundamental norm on which all other legal norms of the state are based. It is not supported by anything else but is assumed to be a logical prerequisite for the legal system to function. It is the source of legitimacy for the entire legal structure. In this context, the Constitution is the primary and recognized, albeit unauthorized, norm from which the validity of all other legal acts originates. The hierarchy of legal norms is formed from it, as is the unity of the legal system. Therefore, the legal effectiveness of the Constitution lies not only in its formal recognition but also in action. According to Kelsen's theory, the Constitution isn't a declaration, but it should function as a supreme norm that forms the legal force of all other norms.

In line with the theory of legal positivism of Hans Kelsen, the Constitution of Ukraine formally plays the role of the basic norm (Grundnorm) in the legal system. Article 8 of the Constitution explicitly states that it has the highest legal force, and that its norms have direct effect, thereby affirming the rule of law as a fundamental principle. Ukrainian legislation is systematically organized in accordance with constitutional principles, demonstrating the hierarchical structure of the legal system in which the Constitution defines the fundamental principles of state order, human rights and freedoms. This corresponds to the Kelsenian model, in which the Constitution is the normative core from which all other norms originate. However, as previously noted, the direct effect proclaimed in Article 8 often remains merely theoretical in practice, as its provisions are frequently ignored or applied selectively, indicating a discrepancy between the Constitution's formal status and the actual state of law enforcement.

As previously mentioned, the Ukrainian Constitution has low level of the legal efficiency; is susceptible to political manipulation: its provisions or interpretations are frequently exploited for tactical purposes and political expediency, and initiatives to amend the Basic Law are often driven by the needs of a particular government rather than strategic necessity. In this context, the instability of institutions that are supposed to protect the constitutional order is important to consider.

A separate, deeply rooted problem that does not fit into the formal logic of the Kelsen model is Ukraine's dual executive power. The Constitution stipulates that the Cabinet of Ministers is the highest executive authority. In practice, however, there is a parallel executive center in the form of the Office of the President, which is not recognized by the Constitution or Ukrainian law as an executive body. Nevertheless, a significant proportion of real power is concentrated in the

substantive revision Mon Jul 26, 2021, URL: https://plato.stanford.edu/entries/lawphil-theory/, Accessed date: 21.06.2025

Office of the President[47]: key decisions are made there, political lines are formed and personnel appointments are approved. This creates a situation in which there are, in effect, two governments in the country: one constitutional and one extralegal. This undermines the principles of legal certainty, transparency and accountability. This phenomenon is very good presented by the retired judge of the Constitutional Court of Ukraine, Honored Lawyer of Ukraine Petro Stetsyuk in his interview “Does Ukraine Need a New Constitution?” (19.07.2022) by Razumkov Centre[48].

This phenomenon has deep historical roots. A similar distribution of real power was already evident in President Kuchma's administration in the 1990s[49]. At the beginning of his term, Leonid Kuchma presented himself as a reformer open to democratic change. However, all the problems were attributed to his entourage, particularly the head of the administration, Dmytro Tabachnyk, who became a symbol of shadow power. People even said that Kuchma was effectively working in Tabachnyk's administration. Key personnel and economic issues were resolved through the presidential administration and not the government. Despite lacking official positions with executive powers, Tabachnyk and his brother had a huge influence on business and political processes. Although the elites did not dare to openly criticize the president, they united against his 'grey cardinals'.

The analogies with the present day are obvious. The functions of the presidential administration, which was later transformed into the Office of the President, remained practically the same — only the name changed. This body's influence significantly exceeds its formal status. As in the 1990s, the key decision-making channel is not the Cabinet of Ministers, but rather a 'Second government' that is not provided for in the Constitution or laws yet has a political weight that outweighs that of the government. This structure creates the illusion of legality while violating the principles of a constitutional state. This system not only destabilizes the balance of power, but also invalidates the legal legitimacy of executive decisions, as they are made by a body that is not authorized to do so under Fundamental Law.

Constitutional effectiveness should also be understood in the context of the Constitution's ability to respond to historical and political changes. Dieter Grimm emphasizes that constitutions establish the fundamental basis of the state, regulate the organization and exercise of state power, structure the relationship between the state and society, and protect individual rights. At the same time, the historical evolution of constitutionalism demonstrates that constitutions cannot be entirely divorced from changing political and social circumstances. Their continued legitimacy

[47]The Office of the President, official website, URL: https://www.president.gov.ua/, Accessed date: 21.06.2025
[48]The interview of Petro Stetsyuk “Does Ukraine Need a New Constitution?” (19.07.2022) by Razumkov Centre, URL: https://razumkov.org.ua/statti/chy-potribna-ukraini-nova-konstytutsiia, Accessed date: 21.06.2025
[49]No Crime. "Collective Tobacconist". Our Time, 07.05.2011, URL: https://news.pn/uk/politics/39598, Accessed date: 21.06.2025

thus depends, among other things, on their ability to provide a stable foundation while retaining the capacity to respond to new challenges. This balance between constitutional stability and institutional adaptability is particularly important in the Ukrainian context, where the effectiveness of constitutional norms depends not only on their formal stability but also on the proper functioning of the institutions through which those norms are implemented. Accordingly, strengthening the Constitution as the Grundnorm of the Ukrainian legal order requires addressing several systemic institutional challenges[50].

For the Constitution of Ukraine to fulfil its role as the Grundnorm, several systemic challenges must be overcome. Firstly, the main provisions of the Constitution must be made stable and inviolable. The independence of bodies responsible for constitutional control must be established to prevent political influence over the Constitutional Court. The practice of dualism within the executive branch must also be eliminated, with the real levels of influence being returned to the Cabinet of Ministers as the only constitutional body of the executive branch. Without this, attempts to restore legal order will remain mere declarations. At the same time, it is necessary to ensure that legal action is truly constitutional, so that individuals have a real opportunity to protect their rights. It is also necessary to raise the level of legal culture, both among citizens and the political elite, so that the Constitution is perceived not only as a formal document, but also as a real social contract that establishes binding, stable and universal rules for everyone.

Finally, according to Kelsen's concept, the legal system is based on an axiomatic foundation — a fundamental norm that does not require legitimization by a higher authority. The Constitution of Ukraine currently only formally fulfils this role and is not an actual Grundnorm.

This lack of normative depth is also reflected in the Constitution's structural shortcomings, particularly regarding its regulation of relations between the parliamentary majority and minority: due to the imbalance in current Constitution of Ukraine the regulation of the status of the coalition and the opposition. Although the concept of a 'parliamentary coalition' is mentioned in the Constitution — for example, in Part 9 of Article 83 — neither its status nor the procedure for its formation nor its powers are legally defined. Conversely, the concept of a 'parliamentary opposition' is not mentioned in the Constitution but is defined in the Law of Ukraine 'On the Rules of Procedure of the Verkhovna Rada of Ukraine'[51]. According to Part 1 of Article 5-1 of this law, 'the parliamentary opposition comprises the People's Deputies of Ukraine who are not part of the coalition of deputy factions in the Verkhovna Rada of Ukraine of the current convocation'. Thus,

[50] Dieter Grimm, "Origin and Change of the Constitution," *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, vol. I/1, 2003, cited in the English translation published by the Konrad-Adenauer-Stiftung, 2020, pp. 1–34.
[51]Verkhovna Rada of Ukraine. The Law of Ukraine 'On the Rules of Procedure of the Verkhovna Rada of Ukraine', No. 1861-VI, Version 19.12.2024, URL: https://zakon.rada.gov.ua/laws/show/1861-17#Text, Accessed date: 21.06.2025

while the coalition is formally mentioned in the Constitution without detail or legislative regulation, the opposition's legal status is defined at the level of the law. This creates institutional imbalance and legal uncertainty. This complicates the effective functioning of the parliamentary system of checks and balances, as well as the implementation of the opposition's controlling role in parliament.

'Democratic openness' refers to the level to which a constitution allows for citizen participation. Dworkin proposed the concept of a 'moral reading of the Constitution' (of the American Constitution)[52], based on the concept of a 'moral reading of the Constitution'. This approach underlines that the interpretation of the constitution should be consistent with moral principles, effectively making the constitution a living key document- is open to ethical reflection and public discussion and participation. In the context of Ukraine, for example, the constitution formally proclaims a democratic system and recognizes the people as the bearers of sovereignty and the sole source of power. But Ukraine's citizens' participation in interpreting, discussing and revising the constitution is very limited. Constitutional reforms are usually implemented with hierarchy level: from the top down, with little genuine public participation, and low public access. Thus, the principle of democratic openness implied by Dworkin's moral reading isn't implemented in Ukraine. Although Ukraine's constitution embodies democratic ideals, it remains a largely elitist document with limited public influence, failing to serve as a true platform for public communication and moral dialogue.

This is formally confirmed by the provisions of Articles 5 and 38 of the Constitution, which enshrines democracy as a form of popular democracy by enabling citizens to participate directly in decision-making via referendums. Article 5 states that sovereignty and power in Ukraine lie with the people, while Article 38 guarantees everyone's right to participate in all-Ukrainian and local referendums. In practice, however, the implementation of these constitutional norms faces serious obstacles. Firstly, it was due to the absence of a valid and effective Ukrainian Referendum Law. Without clear procedures, guarantees, and a regulatory framework, citizens were deprived of the opportunity to directly influence key state decisions, which called into question both the democratic openness of the Constitution and the very content of democracy enshrined in the Basic Law. This legal gap effectively paralyzed the mechanisms of direct democracy. But in 2021 it was adopted the new Law "About the all-Ukrainian referendum"[53].

Under the new law, Ukrainians can vote for: amendments to the Constitution of Ukraine,

[52]Dworkin, Ronald. "The Moral Reading and the Majoritarian Premise." Freedom's Law: The Moral Reading of the American Constitution, 1996, pp. 1–11, 37–43. The American University.URL: http://fs2.american.edu/dfagel/www/DworkinMoralReadingsmaller.pdf, Accessed date: 21.06.2025

[53]Verkhovna Rada of Ukraine. The Law "About the all-Ukrainian referendum", No. 1135-IX, Version 31.03.2023, URL: https://zakon.rada.gov.ua/laws/show/1135-20#Text, Accessed date: 21.06.2025

which according the Constitution of Ukraine requires the approval in an all-Ukrainian referendum; issues of national importance; issues on changing the territory of Ukraine and on the loss of validity of the law or its individual provisions. The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a joint opinion with recommendations on the draft law, most of which were considered before the final adoption of the law by the Verkhovna Rada of Ukraine in January 2021[54]. In their assessments, the Venice Commission and ODIHR noted that the new law significantly surpasses the previous Law of Ukraine "On the All-Ukrainian Referendum" of 2012 in quality and democratic standards.

The organizational and control mechanisms provided for in this law still need to be improved. Additionally, constitutional control over compliance with the referendum procedure must be strengthened to prevent potential violations and manipulation. If the law is amended, it is crucial that the rules on campaign financing align with international standards, particularly the recommendations of the Group of States Against Corruption (GRECO), to prevent any hidden influence on public opinion.

The situation at the port of Giurgiuleşti highlights some of the difficulties associated with implementing international treaties and constitutional requirements in Ukraine. According to certain interpretations, Moldova has not yet fulfilled all its obligations under the Treaty on the State Border between Ukraine and the Republic of Moldova, which was signed on 18 August 1999 and ratified by Law No. 1633-III on 6 April 2000. For instance, the transfer of the road near the village of Palanka — a strategic route connecting Odessa with southern regions — remains a subject of ongoing discussion. Furthermore, the transfer of the Giurgiuleşti port to Moldova occurred without a nationwide referendum, despite Article 73 of the Ukrainian Constitution requiring the confirmation of any territorial changes through such a referendum. This situation undoubtedly requires thorough legal examination and diplomatic efforts to resolve it. Nevertheless, the existence of this case illustrates the challenges associated with democratic procedures and public participation in key decisions[55].

According to the issue of implementing the people's right to a referendum in Ukraine, it is pertinent to recall ex-Prime-Minister Yulia Tymoshenko's account of her experiences in her

[54]Centre for Political and Legal Reforms. (2022, February 11). The Venice Commission published its opinion on the draft law on local referendum. URL: https://pravo.org.ua/venetsijska-komisiya-oprylyudnyla-vysnovok-shhodo-zakonoproyektu-pro-mistsevyj-referendum/ Council of Europe Office in Ukraine. (2021, March 25). Joint Opinion of the Venice Commission of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the Draft Law of Ukraine on Political Parties. Council of Europe Office in Ukraine, URL: https://www.coe.int/uk/web/kyiv/-/joint-opinion-of-the-venice-commission-of-the-council-of-europe-and-the-osce-office-for-democratic-institutions-and-human-rights-osce-odihr-on-the-dra, Accessed date: 21.06.2025

[55] Soroka R., Ukrainian Shipping Magazine, What is behind the transfer of the port of Giurgiulesti to the EBRD, 19.05.2021, https://usm.media/chto-stoit-za-peredachej-ebrr-porta-dzhurdzhuleshty/, Accessed date: 21.06.2025

program document, 'New Course[56]. She highlights the fact that it is impossible to implement the will of the people, even when the necessary legal mechanisms are in place. In particular, she notes that she and her team tried four times to initiate an all-Ukrainian referendum based on a people's initiative. More than three million signatures were collected (according to the article 72 of the Constitution of Ukraine), organizational headquarters were established, and general meetings were held. However, despite taking all the necessary legal steps, the authorities blocked the possibility of holding the referendum. According to Tymoshenko, the president at the time instructed the Central Election Commission not to hold a referendum, and the commission refused to organize it. Thus, even when all the formal requirements were met, the people were deprived of an effective means of directly influencing the government, leaving them with virtually only one way to do so: through revolutionary speeches.

In contrast to this approach, Tymoshenko offers an alternative model that provides a genuine democratic mechanism without the need for protests. This model includes three key elements. Firstly, an organizing committee is created to convene the All-Ukrainian Viche. The Viche is authorized to appoint the People's Central Election Commission, which should comprise representatives of both the public and the authorities. This structure is designed to prevent fraud and ensure legitimacy. Secondly, an independent financial fund for the referendum is created, which is filled with voluntary contributions from citizens and does not depend on the state budget

— thus, excluding the possibility of the authorities blocking the process financially. Thirdly, the People's CEC is granted the authority to form precinct election commissions, attract observers — including international ones — and act within the framework of current election legislation. Thus, the legal procedure is preserved, but its real implementation is ensured rather than mere imitation. In my opinion, this model is interesting to study and discuss publicly, and it could form the basis of a new social contract in Ukraine that provides for real democracy rather than merely proclaiming it.

In the context of democratic openness, the issue of eliminating the political monopoly on state governance is important. Currently, Ukraine's political system remains centered on individual political elites and leaders, hindering the development of institutions of popular control and contradicting the principles of a sustainable democratic society. In this context, the proposals of Mykola Tomenko, which he has repeatedly voiced in public speeches and publications (particularly on his website)[57], are highly relevant. He believes that, until an effective system of

[56]Tymoshenko Yulia, Ukraine's New Course: New Opportunities for Everyone: Strategy for Innovative Development, under the general editorship of Y.V. Tymoshenko, V.A. Lomakovich // Under the scientific editorship of Doctor of Economic Sciences T.E. Unkovskaya pp.25-26, 2018, https://www.calameo.com/books/003168372368a50d6b510, Accessed date: 21.06.2025
[57]Tomenko Mykola, personal official website. URL: https://tomenko.ua/video/mykola-tomenko-ukrajinskyj-prezydent-povynen-maty-zobovyazannya-vyklyuchno-pered-ukrajinskym-narodom/, Accessed date: 21.06.2025

popular control and a stable democratic institutional model have been established, presidential candidates should commit to nominating themselves for only one term. Each candidate should present a clear program of action and a step-by-step plan for its implementation with transparent mechanisms, rather than limiting themselves to populist slogans. The president should be a public manager with a defined vector of state development, not a bearer of promises and missions. Additionally, the practice of announcing candidacies for key state positions subject to presidential appointment should be introduced. These positions include Minister of Defense, Head of the Security Service of Ukraine, Prosecutor General, and Secretary of the National Security and Defense Council. This would enable society to evaluate the candidate's character and personnel policy in advance. At the same time, the President's responsibility should be clearly defined as being to the Ukrainian people and not to narrow political groups or informal centers of influence. These steps are intended to eliminate political monopolies and establish a transparent and accountable model of state governance. This approach aligns with the principles of a 'living constitution' — a space for ongoing interaction with citizens and the realization of deliberative democracy, where the government not only proclaims democracy, but also effectively implements it through transparent political processes.

Building on the theme of true democracy and the elimination of political monopolies, it is crucial to recognize the need for a new social contract. As the bearers of sovereignty and the sole source of power in accordance with Article 5 of the Constitution of Ukraine, the Ukrainian people have the right and the obligation to exercise their sovereign right to self-government, organizing state and public life as they see fit. This means not waiting for permission from the political elite, but rather independently initiating a broad public dialogue on the new state system architecture.

Clearly and legally, changes to the Constitution, or even the adoption of a new Ukrainian Constitution, can only be made in conditions of peace — after our victory over the aggressor. We Ukrainians are confident of this victory. However, we must already prepare for this key stage by forming clear procedures, transparent mechanisms, and clear principles and legal guarantees that will enable us to rethink and update the social contract with maximum legitimacy and national consensus.

This will not just be a technical amendment to the text of the Constitution, but a profound renewal of its philosophy, with human dignity, freedom, national dignity, and responsibility at its core. Rather than being a constitution based on the political agreements of elites, it should be a constitution of the Ukrainian people, created with the participation of citizens, socially active communities, volunteer movements, the military, scientists, lawyers and representatives of civil society.

This process should begin today with public discussions, the creation of participation platforms, expert circles, legal initiatives and the democratic modelling of a new system of governance. Only in this way can we ensure that the amendments to the Basic Law will truly guarantee the immutability and protection of citizens' rights and freedoms, affirm national dignity and establish the unshakable principles of justice, the rule of law, social partnership and development.

The new social contract should indeed be the result of the people's conscious will, as they no longer wish to be merely an 'electorate', but rather to take on the role of a full-fledged subject in the formation of the state. This is why amendments to the Constitution should not be a 'gift from above', but a true act of popular sovereignty, adopted immediately after victory in a free Ukraine where dignity is at the center.

In practice, the current system of governance in Ukraine is mixed and officially it is parliament-presidential, but there is a significant concentration of executive power in the hands of the President. This creates a problem of dual power between the President and his Office and the Prime Minister. As noted above, both have their own powers, but due to a lack of clear division of responsibilities, conflicts arise and decisions are blocked. This situation negatively affects the effectiveness of state governance and generates political instability. To overcome these problems, Ukraine should adopt a clear form of government. In my opinion, it should be a parliamentary republic. In this system, the government is formed by parliament and is independent of the president, who performs mostly representative and constitutional functions, focusing on foreign policy, defense, and ensuring the constitution is upheld. This would eliminate dual power, reduce the risk of power becoming concentrated in the hands of one person, and ensure the government is transparent and accountable to citizens. To successfully implement this model, appropriate constitutional amendments must be developed and adopted to establish clear mechanisms for forming the government, distributing powers, and controlling their implementation. It is especially important to consolidate limitations on the President's powers in peacetime, given that war currently gives him expanded powers which should not become the norm. However, the Ukrainian people must resolve this issue, and it is necessary to put it up for public discussion involving civil society, lawyers, and representatives of the academic community. Due to the issue's sensitivity and potential international ramifications, it would also be advisable to consult independent international experts, particularly the Venice Commission, on the matter. Its conclusions could provide a professional evaluation of whether actions comply with international law and the Constitution of Ukraine. They could also help to develop a legitimate and transparent approach to resolving this issue. This would not only avoid speculation but also strengthen trust in state

institutions and democratic processes.

To conclude my reflections on this subchapter, I would like to draw attention to the twelve principles of good democratic governance[58]. These were developed by the Council of Europe in 2008 and are supported by European Union countries as the basis for quality public administration. These principles aim to ensure transparency, efficiency, accountability, and citizen participation in decision-making processes. Notably, they encompass key principles such as the rule of law, ethical conduct, innovation and transparency, a clear separation of powers, stable funding, and safeguarding human rights. These principles are particularly relevant in the context of my topic — the formation of a new social contract, the reform of democratic mechanisms and the introduction of real instruments of power control. They can and should form the basis of a review of the functioning of state institutions in Ukraine, particularly about popular initiatives, referendums, transparent decision-making and the prevention of power grabs.

Implementing these principles in Ukrainian public administration would lay the groundwork for establishing a genuinely democratic, transparent and effective governance system where the interests of the people would be both declared and effectively safeguarded at an institutional level. This is an important step towards forming a conscious, responsible and influential civil society.

1.4 Reforming the Constitution: New Fundamental Act or Targeted amendments

As previously mentioned, the constitutional process in Ukraine, including the reform or adoption of a new constitution, should be considered in the context of Ukrainian statehood. The origins of Ukrainian independence date back much further than 1991 — they are rooted in the Ukrainian people's centuries-old struggle for national liberation and the right to their own state, culture, and political self-realization. While the modern Ukrainian state officially restored its independence in 1991, its state tradition was formed much earlier, beginning with Kyivan Rus and continuing through the Constitution of Pylyp Orlyk in 1710 and the attempts to establish an independent state during the UNR period (1917–1921). This tradition also encompasses the dissident movement of the second half of the 20th century. I want to emphasize the word 'restored', not 'proclaimed'. One of the key figures who personified the continuity of the Ukrainian state idea was Levko Lukyanenko: a Soviet political prisoner; co-founder of the Ukrainian Helsinki Union; and author of numerous publications on human rights and Ukrainian independence. In 1961, he was sentenced to death for 'anti-Soviet activities', but this was later commuted to 15 years in prison.

[58]Council of Europe, The Centre of Expertise for multilevel governance, 12 Principles of Good Democratic Governance, 2008, URL: https://www.coe.int/en/web/centre-of-expertise-for-multilevel-governance/12-principles, Accessed date: 21.06.2025

He spent these years in high-security camps, remaining faithful to the idea of a free Ukraine. From 1990 to 1991, Lukyanenko was a People's Deputy of Ukraine. It was he who co-authored the Act of Proclamation of Independence of Ukraine, which was proposed to the Verkhovna Rada on 24 August 1991. The Ukrainian parliament adopted the act after the failed August Putsch in Moscow (the attempted coup d'état by the State Committee for the State of Emergency — DKNS, 19–21 August 1991), which finally shook the legitimacy of the union center (SRSR). The initial version of the document, presented by Lukyanenko himself, referred to the restoration of Ukraine's independence as the legal successor of the Ukrainian People's Republic, rather than a 'proclamation'. However, during parliamentary debates, the term 'restoration' was changed to 'proclamation' to avoid legal disputes and strengthen the newly created state's international legitimacy. The Act was approved by referendum on 1 December 1991, with more than 90% of citizens voting in favor of independence. This decision was not only an expression of political will but also confirmed the legitimacy of the new state system.

Simultaneously with the declaration of independence, the need arose for a new legal basis — the constitution of a sovereign state. The transition from the 1978 Soviet Constitution to Ukraine's own Basic Law took several years. Politicians played a key role in this process, as did lawyers and legal scholars. Mykhailo Syrota, who headed the Constitutional Commission and was the main speaker of the draft Constitution during its adoption in June 1996, was particularly influential. Further information on the history of the creation, adoption and transformation of Ukraine's Fundamental Law, as well as its unique features, can be found in the analytical material Constitution Day-2024: “How the Fundamental Law was Created and Amended and What Makes It Special”[59].

These events were the catalyst for the creation of Ukraine's modern Constitution, adopted on 28 June 1996 — known as "Constitutional Night" — five years later. Today, almost three decades later (29 years), the state is once again faced with the question of whether it needs a new constitution or a deep update of the current one.

In the context of constitutional reform, the question of whether to adopt a new Constitution of Ukraine or make profound changes to the current Fundamental Law is key. Arguments in favor of adopting a new constitution are primarily based on the idea of a symbolic reboot of the state. Such a step could consolidate Ukraine's identity as an independent, democratic, Europe-oriented state and establish a constitution that differs in structure, spirit and form from the current one, in line with European legal norms. This would send a clear signal to citizens, international partners

[59]Goncharenko Anna. The analytical material Constitution Day-2024: “How the Fundamental Law was Created and Amended and What Makes It Special”, We-Ukrainians. 27.06.2024, URL: https://weukraine.tv/article/den-konstitutsiji-2024-jak-stvorjuvali-ta-zminjuvali-osnovnij-zakon-i-chim-vin-osoblivij/, Accessed date: 21.06.2025

and the domestic political system that the transitional stage has been completed, and a qualitatively new state era has begun.

In addition, adopting the new Fundamental Law will enable us to immediately incorporate provisions that are fully consistent with the acquis Communautaire, the Council of Europe's standards, the European Court of Human Rights' practice, and the principles of the rule of law. Rather than patching up the outdated text with fragmentary amendments, this will lay the foundation for a modern system of public power. At the same time, the new constitution could address several of the current constitution's systemic flaws: contradictions could be eliminated, the distribution of powers could be clarified, procedures could be streamlined, and the text could be made more accessible and understandable. Simplifying the structure and language of the constitution would also reinforce its role as a social contract.

However, despite the obvious advantages of this approach, there are several significant caveats. Firstly, replacing the Constitution entirely could result in a breach of legal continuity, which is particularly sensitive during wartime and the post-war period, when threats to statehood are prevalent. Secondly, achieving a broad consensus on the new text of the Fundamental Law is extremely difficult in Ukrainian political realities. Society is politically polarized, and I do not believe that any political force today has sufficient legitimacy to initiate and implement such a large-scale process single-handedly.

In light of historical experience, particularly the events of the so-called 'Constitutional Night' on 27–28 June 1996, when the Constitution of Ukraine was adopted amid political tension, prolonged confrontation between the branches of power, and unprecedented procedural pressure, it is important to be aware of the risks of repeating such a scenario. The adoption of the Fundamental Law at that time was only possible thanks to an extraordinary display of political will and compromise, but it also left several contradictory norms and gaps in the text. This demonstrates that adopting a new constitution is not only a legal act, but also an in-depth political process requiring an exceptional level of unity and mutual trust between key institutions. In the current context of war and a fragmented and tense political environment, reproducing such a model is neither feasible nor desirable.

Therefore, in my opinion, a more balanced and constructive approach would be to renew the current Constitution in depth, considering historical lessons, modern challenges and European guidelines. This approach would allow for the gradual and meaningful reform of key sections, such as the division of powers, the status of the parliamentary coalition and opposition, the judicial system and local self-government. It would also consolidate real mechanisms of democracy and implement the norm of direct action. Such an approach would ensure legal stability and avoid the

danger of a legal vacuum. Thanks to the existing procedures for amending the Constitution, the connection between institutional succession and reform progress is preserved. Therefore, I believe that deep constitutional renewal is a more realistic, stable and adaptive tool for change, capable of ensuring high-quality reform without threatening legal continuity.

One of the key arguments in favor of amending the current Constitution of Ukraine is the importance to reconsider the status of individual regions, in particularly of the Crimea and Donbas. It should consider the historical context, the political situation since 2014 and the challenges posed by a large-scale war. Constitutional law should be a tool that not only allows state sovereignty over these territories to be legally fixed but also creates the political and legal conditions for their reintegration.

The Crimean issue is particularly sensitive due to its historical, political and legal aspects. Back in 1918, during the reign of Hetman Pavlo Skoropadsky, Crimea was integrated into the Ukrainian State through an economic blockade. Skoropadsky imposed this blockade on Crimea, which prevented the region from growing crops. This forced the local authorities to seek an alliance with Kyiv. In response, the Ukrainian State recognized Crimea's special autonomous status. This is an example not only of historical compromise, but also of flexible constitutional thinking, recognizing the right to autonomy as a means of achieving state unity. Furthermore, it is important to acknowledge that Crimea is the historical homeland of the Crimean Tatar people and that any future constitutional changes must respect their right to self-determination within the Ukrainian state. This is why restoring the Autonomous Republic of Crimea as a real subject within Ukraine is a difficult but necessary step. The Constitution should recognize the Crimean Tatars as the indigenous people of Crimea with their representation in autonomous government bodies, providing the decentralized governance model with cultural and linguistic autonomy. Historical allies of the Crimean Tatars include Turkey, and Great Britain, which supported the Ottoman Empire against Russia during the Crimean War of 1853–1856.

Therefore, revising the constitutional provisions regarding Crimea should not only be a matter of formalizing its status. A deep reform is needed that will enable Ukraine to restore Crimea as a place of justice, rights and freedoms, with significant international involvement and interethnic consensus.

Donbas also has its own history of separatism, particularly during the period of the so-called Kryvyi Rih-Donetsk Republic in 1918. At that time, the region expressed its desire for a separate administrative status based on its economic potential and industrial specificity. Although this initiative was not implemented permanently, the idea of a separate approach to regional governance was etched into historical memory. Even in independent Ukraine, Donbas remained a

complex region with significant economic and political influence. However, following the onset of Russian aggression in 2014, the reintegration of the temporarily occupied Donbas territories became a national challenge. In this context, constitutional amendments should allow for the modernization of administrative and territorial structures to enable the adaptation of management models to the specifics of individual regions, the establishment of flexible forms of local self-government that do not contradict the unitary system but allow local communities to participate in key decision-making processes, and the creation of security control mechanisms over potentially vulnerable territories in the post-conflict period.

The Constitution of Ukraine should be a flexible, living document capable of responding to the challenges of the time, rather than a frozen document. The histories of Crimea and Donbass demonstrate the need for comprehensive yet balanced constitutional solutions that balance state unity with regional diversity. This is why the deep modernization of the Ukrainian Constitution — emphasizing reintegration, autonomy, international alliances, historical continuity and European integration — should be a priority for the next stage of Ukrainian statehood.

The issue of language in Ukraine is significant not only culturally, but also politically, historically and in terms of security. During long time, the Ukrainian language has been systematically oppressed, particularly during the imperial and Soviet eras. Well-known examples of such prohibitions include the Valuev Circular of 1863 and the Ems Decree of 1876, which directly prohibited the use of the Ukrainian language in education, publishing and church life. During the Soviet era, despite the nominal recognition of Ukrainian, deep Russification took place — the Russian language dominated in cities, universities and state administration, especially in the Slobodsk Governorate of Ukraine (now Eastern Ukraine).

Following the restoration of independence in 1991, Article 10 of the 1996 Constitution of Ukraine enshrined Ukrainian as the state language. However, the second part of the same article speaks of 'the comprehensive development, use and protection of the Russian language and other languages of national minorities. Although this balance appeared to be a compromise in the 1990s, in the context of Russian aggression today, it has taken on a new meaning. Since 2014, and particularly following the large-scale invasion in 2022, language has evolved from merely a means of communication to a symbol of identity and a marker of political and national affiliation. Russia openly uses the 'protection of Russian speakers' as a justification for its aggression against Ukraine. In these circumstances, retaining a constitutional provision that formally grants special status to the Russian language appears both anachronistic and a potentially dangerous legal risk. Therefore, it is necessary to revise the wording of Article 10 of the Constitution to eliminate legal loopholes that could be exploited for political manipulation. At the same time, it is necessary to strike a

balance by fully recognizing Ukrainian as the only state language while properly guaranteeing the rights of minority languages in accordance with Council of Europe standards, particularly the European Charter for Regional or Minority Languages. Additionally, real mechanisms must be introduced to support and develop the Ukrainian language. For citizens in the eastern and southern regions of Ukraine, where the Ukrainian language was historically not dominant in the education system, it is particularly important to guarantee free state courses in Ukrainian, as well as other educational and cultural programs aimed at improving language proficiency. Such an approach would strengthen the country's linguistic unity without violating the rights of individual communities. This requires not only linguistic reform, but also constitutional reform. The updated constitution or amendments to the current one should clearly state that the Ukrainian language is fundamental to national unity, not just a state language. At the same time, clear, unambiguous mechanisms must be prescribed for protecting other languages — but without granting the language of the aggressor state any privileged status.

Another important argument in favor of amending the current constitution rather than adopting a new fundamental law is the need to clearly define, legally consolidate and further ensure Ukraine's European and Euro-Atlantic course.

After five years of hybrid warfare, the annexation of Crimea and the occupation of parts of Donbas began in 2014. Despite this, Ukraine remained a formal member of the CIS (Commonwealth of Independent States) until 2019, even paying contributions to this organization, which is effectively controlled by Russia and President Putin. It was only in 2019 that Ukraine officially withdrew from the CIS, recognizing the impossibility of further cooperation in the face of aggression. This was a logical and necessary step that legally consolidated Ukraine's movement into a fundamentally different political and security dimension.

There were different attitudes of the different Ukrainian presidents to the question of the European integration: from declarative support to outright disregard for this strategic course.

Leonid Kravchuk (1991–1994)- First president of an independent Ukraine, adopted a balanced foreign policy between the East and the West. At that time, the concept of European integration was only just emerging in Ukrainian political discourse. During Leonid Kuchma's term (1994–2005), the issue of European integration became more formalized, but largely remained a tool for maneuvering between Russia and the West without being enshrined in the Basic Law. With Viktor Yushchenko's election (2005–2010), Ukraine's path towards Europe received clear political expression for the first time. The president adopted a pro-European stance and supported Ukraine's rapprochement with NATO and the EU. However, even during his tenure, no systemic constitutional amendments were adopted to consolidate the relevant mechanisms for implementing

this foreign policy direction. So, European integration policy was dependent on the personal vision of the president of Ukraine. The key turning point was Viktor Yanukovych's term of office (2010–2014). He refused to sign the Association Agreement in November 2013, which sparked mass protests — the Revolution of Dignity. The protesters' main demand was for Ukraine to return to the path of European integration. Yanukovych's subsequent resignation and flight from the country demonstrated the weakness of a system in which the state's strategic foreign policy was not supported institutionally or legally. Following this, Petro Poroshenko (2014–2019) made European integration and NATO accession central to state policy. It was during his presidency that the Association Agreement with the EU was signed. However, despite these successes, effective constitutional mechanisms for implementing this policy were not created. The absence of specialized institutions or commitments from key government bodies meant that the implementation of European integration policy depended primarily on political will. Since 2019, Volodymyr Zelenskyy has declared Euro-Atlantic integration an unchanging priority and included it in national strategies. Nevertheless, even after the preamble to the Constitution was amended in 2019 to officially enshrine Ukraine’s aspiration to join the EU and NATO, no constitutional bodies or procedures were established to implement this policy. Consequently, despite numerous statements, the European integration strategy lacks appropriate institutional and legal guarantees. The Constitution of Ukraine still does not contain: a clear division of powers is required between the President, the Cabinet of Ministers and the Verkhovna Rada with regard to the formation and coordination of the European integration and Euro-Atlantic course. The executive authorities or head of state should be obliged to report on the implementation of this course, and there should be specialized positions or structures, such as a vice-prime minister for European integration or a parliamentary committee with clear control functions.

All of these require profound changes to the current Constitution. This will create an effective mechanism for controlling and implementing Ukraine's strategic course, regardless of changes in the political situation. It will ensure the continuity of state policy and protect national interests in the European and security spheres.

Conclusions to the 1st Chapter:

The Constitution of Ukraine sets out high standards for the protection of human rights and freedoms, the rule of law, respect for human dignity, and democratic order. In practice, however, these are often only partially implemented or not implemented at all dues to imperfect implementation mechanisms, weak institutional support and a lack of culture of law enforcement. In particular, the direct effect of constitutional norms, the constitutional control system and the constitutional complaint institution do not perform their functions fully.

Ukraine's cooperation with international organizations, as well as the implementation of 'soft law' and recommendations from the Venice Commission and the European Court of Human Rights, plays an important role in adapting national legislation to European standards and strengthening the independence of the judiciary.

The Constitution of Ukraine should be considered not only as a textual document, but also as an active instrument of democratic governance. The effectiveness of this instrument depends on modernizing legal regulation and improving mechanisms for protecting rights, as well as forming a culture of the rule of law. Historical experience, political challenges and Euro-Atlantic integration require profound reforms to overcome the political instrumentalization of the Constitution and strengthen the institutional potential of the state.

The current constitutional process is characterized by fragmented changes, a lack of systemic vision and contradictions in individual norms, all of which complicate legal stability. Attention must be given to ensuring the direct effect of constitutional norms, introducing an effective constitutional complaint system to protect rights, and resolving the issue of dual power within the executive branch.

Modern challenges such as war, digitalization and the environmental crisis require the Constitution to be updated to consolidate new categories such as digital rights, personal data protection, environmental guarantees, inclusiveness and national security. A new social contract based on mutual responsibility, trust, and solidarity is needed, as is the principle of Ukrainecentrism, which combines national interests with partnerships in the international arena.

The key is to consolidate human dignity as a fundamental legal principle to ensure the protection and consolidation of society around common values and national wealth.

Transitioning to a parliamentary republic, improving the distribution of power, ensuring the transparency and accountability of government bodies and developing democratic mechanisms for citizen participation are all necessary steps to strengthen democracy.

Considering historical continuity, the challenges of modernity, and European standards, the priority must be to reform the current Constitution deeply and transform it into a living, flexible document that can effectively respond to the challenges of the time and ensure the sustainable development of Ukrainian statehood.

2. Constitution and security: Between NATO and National Defense Capabilities

2.1 The impact of digitalization and globalization on the legal system

Modern constitutionalism has lost its status as the sole leader in domestic law and is gradually becoming a global phenomenon that seeks to bridge the traditional divide between customary and fundamental rights. This reflects the modern challenges associated with

developing public international law and legal institutions, particularly about the protection of human rights and fundamental freedoms. Nevertheless, the constitution continues to play a pivotal role in stabilizing and enforcing legal norms within the national state. Thus, the dual nature of the constitution as both an internal and an external legal institution emerges, a phenomenon that is particularly evident in modern transnational processes. In the context of security and the influence of digitalization and globalization on the legal system, it is impossible to ignore the qualitative changes caused by European integration. As Prof. Vasco Pereira da Silva, rightly points out, this necessitates expanding the traditional concept of the constitution to enable it to effectively perceive and harmonize various levels of legal regulation: national, European, and international[60]. The processes of digitalization and globalization are significantly changing the legal systems of modern States, creating the need to develop new regulatory and legal mechanisms capable of responding adequately to the challenges of the information society. These changes affect not only the technological dimension, but also fundamental legal institutions, particularly the legal personality of the individual, his digital rights, the guarantee of security in cyberspace and digital public infrastructure. In the face of constant cyber-attacks and war challenges, information threats and automation of public administration processes, Ukraine is actively adapting its legislation to international standards, particularly those of the European Union, and at the same time creating a unique model of digital state.

As Paulina Starski notes[61], examples of attacks on Ukrainian authorities, in January-February 2022, demonstrate the need to reform the regulatory framework in the field of critical infrastructure protection. To find a comprehensive solution, it is necessary and essential to carefully examine the specificities of cyberspace, the nature of cyber-attacks and the conceptual framework of cybersecurity. The concepts of "public duties" and "state obligations" must be considered inseparably in the context of cybersecurity, with a clear definition of how constitutional, supranational and international legal frameworks define cybersecurity as a core function of the state in both peacetime and armed conflict, and the adaptation of the legal system of the country, in particular Ukraine, to the evolution of digital threats.

The recent large-scale cyber-attack on Ukraine's critical infrastructure, which took place on 19 December 2024[62], was yet another demonstration of the deep vulnerability of the state's digital environment and the urgency of a legislative response. As a result of a targeted attack, likely

[60]Prof. Vasco Pereira da Silva, La Constituzione di oggi e di domani, PasSaggi Constituzionali, ETPbooks, Anno IV-Numero 2-Dicembre 2024, ISBN: 978-618-5752-41-5.p. 63-66

[61]Prof. Vasco Pereira da Silva, Kämmerer J.A., Galetta D.-U.(eds.), New Public Tasks in Time of Tension, Starski Paulina, Ceber-Security in Times of War. A new Public Task, pp.97-112, 2023, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[62] Ukrainian Pravda. Ukrainian Pravda. I.Diakonov, Largest cyberattack on Ukraine's state registers: Ministry of Justice systems shut down, 20.12.2024, URL: https://www.pravda.com.ua/news/2024/12/20/7489933, Accessed date: 21.06.2025

carried out with the involvement of Russian-backed cyber-groups, several key state registers managed by the Ministry of Justice of Ukraine were disabled. In particular, the Single State Register of Legal Entities and Individual Entrepreneurs, the State Register of Real Estate Rights and the State Register of Civil Status Acts of Citizens were suspended. This incident caused large-scale disruptions in the provision of administrative and legal services, as well as disrupting the continuity of law enforcement activities of state authorities. According to official reports, the attackers not only gained access to the servers, but also carried out destructive actions against backup copies of data, including those stored on hosting outside Ukraine[63]. Although the Ministry of Justice assured that the information would be preserved and subsequently restored, the incident revealed serious shortcomings in the national cybersecurity and information risk management system. The system took 20 days to restore full access.

This attack, which experts say was the largest on Ukraine's state registries during the full-scale war, highlighted the urgent need to review approaches to digital security not only at the level of statutes, but also at the level of the fundamental laws of the state. This example clearly demonstrates the need to update the Constitution of Ukraine to adapt it to the realities of the digital age and modern challenges. It is advisable to include provisions on the right to information security, digital privacy, and the constitutional obligation of the state to ensure an adequate level of protection of critical information infrastructure. This approach is in line with the pan-European trend in which states have recognized the fundamental nature of digital rights and included appropriate guarantees in their constitutions (for example, the practice of the German Federal Constitutional Court on the protection of IT privacy since 2008)[64]. In 2008, the Federal Constitutional Court of Germany (Bundesverfassungsgericht) in case No. 1 BvR 370/07 and 1 BvR 595/07 recognized the existence of a new fundamental right - the right to guarantee the confidentiality and integrity of information technology systems (Grundrecht auf Gewährleistung der Vertraulichkeit und Integrität informationstechnischer Systeme).

As a result, the case of the December 2024 cyberattack not only reveals technological vulnerabilities but also demonstrates the structural need to formulate a holistic national digital policy, which should include regulation, institutional capacity, and a constitutional and legal basis for the effective protection of human rights and freedoms in the digital environment.

In this context, there is an objective need to modernize the Constitution of Ukraine to

[63] Novynarnia. Russians launched the largest cyberattack on the state registers of Ukraine - the work of the Ministry of Justice systems was stopped. 20.12.2024, URL: https://novynarnia.com/2024/12/20/rosiyany-zavdaly-najmasshtabnishoyi-kiberataky-na-derzhreyestry-ukrayiny-zupyneno-robotu-system-minyustu/, Accessed date: 21.06.2025

[64]Federal Constitutional Court of Germany (Bundesverfassungsgericht), No. 1 BvR 370/07 and 1 BvR 595/07,27.02.2008,URL:https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2008/02/rs20080227_1bvr037007en.htm l, Accessed date: 21.06.2025

integrate the principles of the digital age into the foundations of the state system. In particular, it is considered appropriate to normatively enshrine: 1) The right to digital identity and protection of personal data; 2) The right of access to electronic public services; 3) The obligations of the state to ensure the cybersecurity of citizens; 4) The guarantees against discrimination in the digital environment; 5) The principle of technological neutrality of public authorities. This constitutionalisation of digital rights will be in line with modern European trends. In German constitutional law, for example, the mentioned above decision of the Federal Constitutional Court in 2008 recognised the right to the confidentiality and integrity of information systems as a separate fundamental right arising from the combination of Art. 1 and Art. 2 of the Basic Law of the Federal Republic of Germany (Grundgesetz)[65] . Article 1 guarantees that human dignity is inviolable and must be respected and protected by all public authorities. This rule lays the foundation for the legal order in Germany, on which other fundamental rights are built, particularly in digital privacy and security. Article 2 of the Basic Law guarantees the right of every person to the free development of his or her personality, provided that this development does not violate the rights of others or is contrary to the constitutional order or moral standards. Importantly, this article also covers the right to life and physical integrity, by stipulating that these rights may only be violated in accordance with the law. This concept also provides the basis for protecting personal data and ensuring digital privacy, as a breach of digital security can violate these fundamental rights. These two articles are thus interrelated and provide the basis for the protection of humans rights not only in traditional areas, but also in the digital environment, where the confidentiality of information and the integrity of information systems become an integral part of human rights. This approach emphasizes the positive obligations of the state to prevent digital threats, even from private actors, especially in the context of large-scale cyber-attacks.

Given the growing scale and complexity of cyber threats, international legal approaches to regulating cyberspace become particularly relevant for Ukraine as a state facing armed aggression and at the same time seeking integration into the European Union. The experience of leading international actors, such as the EU, NATO and the United Nations, demonstrates the need to create comprehensive legal architecture in the field of cybersecurity, which would include both preventive and reactive mechanisms in the event of cyber-attacks.

Ukraine is gradually aligning its national legislation in the field of cybersecurity with international and European standards, in particular the principles enshrined in the Tallinn

[65]Federal Ministry of Justice. The Basic Law of the Federal Republic of Germany (Grundgesetz), Art.2, URL: https://www.gesetze-im-internet.de/gg/BJNR000010949.html, Accessed date: 21.06.2025

Manual[66], as well as the provisions of Directive (EU) 2022/2555 (NIS2)[67] and Regulation (EU) 2019/881[68] on cybersecurity. This process reflects the Ukrainian state's desire to integrate into the European legal space, including by harmonizing norms for the protection of critical information infrastructure, strengthening state oversight of compliance with cyber standards, and ensuring respect for human rights in the digital environment.

In 2023 Ukraine signed a working memorandum with the European Cyber Security Agency (ENISA)[69], which opened new opportunities for the exchange of practices and coordination of policies in the field of cyber protection. The government's digital transformation programs, approved as part of the Recovery Plan, provide for the development and adoption of regulatory acts aimed at implementing the provisions of NIS2, including updating the status of critical infrastructure entities, establishing responsibilities for cyber protection, and strengthening the state's supervisory powers. In addition, the Verkhovna Rada of Ukraine is considering draft laws to meet Ukraine's European commitments. Draft law No. 8087[70] provides for the establishment of a national system for monitoring and responding to cyber incidents, as well as regulating the procedure for exercising control over critical infrastructure facilities by authorized bodies. Sectoral regulators, such as the National Bank of Ukraine and the Ministry of Energy, have already implemented the first regulatory acts in the relevant sectors, focusing on the provisions of NIS2.

At the same time, the Constitution of Ukraine, adopted in 1996, does not contain direct provisions reflecting the modern challenges of the digital age, in particular the right to digital security, protection of personal data or state guarantees in the field of cyberspace. The current wording of Articles 31 and 32, which deal with privacy and correspondence, only partially covers the modern content of the right to IT privacy, which, for example, was formulated as a separate fundamental right in the 2008 decision of the German Federal Constitutional Court. Therefore, considering the new realities, it is advisable to amend the Constitution of Ukraine.

Thus, the completion of the process of harmonizing Ukrainian legislation with EU law in

[66]CCDCOE, Tallinn Manual, official website, URL: https://ccdcoe.org/research/tallinn-manual/, Accessed date: 21.06.2025

[67]European Union. Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), Document 32022L2555, URL: http://data.europa.eu/eli/dir/2022/2555/oj, Accessed date: 21.06.2025

[68]60 European Union. Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act), Document 32019R0881, URL: http://data.europa.eu/eli/reg/2019/881/oj, Accessed date: 21.06.2025

[69] ENISA, Enhanced EU-Ukraine cooperation in Cybersecurity, November 13, 2023, URL: https://www.enisa.europa.eu/news/enhanced-eu-ukraine-cooperation-in-cybersecurity#:~:text=The%20European%20Union%20Agency%20for%20Cybersecurity%20%28ENISA%29%20h as, capacity-building%2C%20best%20practices%20exchange%20and%20boosting%20situational%20awareness, Accessed date: 21.06.2025

[70]Verkhovna Rada of Ukraine. Draft Law on Amendments to Certain Laws of Ukraine Regarding Urgent Measures to Strengthen Cybersecurity Capabilities of State Information Resources and Critical Information Infrastructure Facilities, 8087, 29.09.2022, URL: https://itd.rada.gov.ua/billinfo/Bills/Card/40553, Accessed date: 21.06.2025

the field of cybersecurity logically implies a constitutional update that would provide an adequate legal basis for modern cyber policy and ensure the digital rights of citizens in the context of hybrid threats and global digitalization.

Building a comprehensive cyber defense system is impossible without simultaneously rethinking the nature of state-citizen interaction in the digital age. It is at the intersection of security and human rights that the need for new public-legal architecture arises, centered on the concept of digital statehood. The most representative example of this in Ukraine is the implementation of the "State in a Smartphone" strategy and its implementation. This strategy announced in 2019, which aims to transfer the maximum number of state services to an online format. The institutional embodiment of this strategy was the digital ecosystem "Diya", which integrates electronic documents, public services, digital identification and tools for interaction between citizens and the state (https://diia.gov.ua).

The "Diya" platform acts not only as a technical means of modernizing public administration, but also as a fundamental element of the transformation of public-legal relations, in which digital communication between citizens and the state acquires the status of the main mechanism for the implementation of individual rights. It goes beyond the convenience or digitization of services - the platform forms a new legal paradigm in which digital interaction acquires constitutional significance as a form of exercising human rights and fundamental freedoms. For example, the right to appeal to public authorities, the right to participate in elections (in the future through e-voting), access to social security, education and healthcare - all of these are already or potentially implemented through digital interfaces. Against this background, there is an objective need to review the constitutional and legal basis of public administration in Ukraine. Such a review should take into account - the recognition of the digital form of exercising rights as equivalent to the traditional forms; - the consolidation of guarantees of equal access to digital services regardless of place of residence, age or social status; - the creation of mechanisms for constitutional control of state interference in citizens' digital rights, in particular in the context of personal data processing, cybersecurity and electronic voting. The Diya platform thus serves not only as a model of digital modernization, but also as a catalyst for updating the constitutional model of state-citizen interaction in the digital environment. In the context of hybrid warfare and digital globalization, "Diya" has become a projection of a new model of electronic democracy, which requires appropriate regulatory consolidation at the level of the Basic Law.

In the context of the digital transformations that are actively taking place in Ukraine, an important aspect is the development of mechanisms for the protection of personal data, especially in private law enforcement. This process is directly related to the introduction of e-Justice, which

is one of the main components of the concept of digital transformation of justice in Ukraine.

The experience of European Union countries, such as Portugal, in the development of private actions and collective actions for breaches of the GDPR (General Data Protection Regulation) is important for understanding the possibilities of adapting these mechanisms to the national legal system.

In particular, the analysis presented by Pedro Lomba in his work "Development of Private Enforcement Mechanisms of the GDPR in Portugal"[71] highlights key aspects of the implementation of private and collective actions in the field of data protection. Portugal, as one of the countries where private enforcement mechanisms are particularly important, demonstrates the importance of maintaining a balance between the right to the protection of personal data and the specificities of national legislation. The analysis proposed by Pedro Lomba according to the private and collective redress in Portugal underlines the importance of structured and active participation of citizens and NGOs in data protection processes. The updating of this issue in the context of European standards is useful for the development of enforcement in Ukraine, especially in the context of harmonizing national legislation with European norms regulating the protection of citizens' digital rights.

The functioning of the Unified Judicial Information and Telecommunications System (UETIS)[72], which is intended to ensure the digitization of justice, is still not fully stable and accessible to all categories of users. Technical failures, limited integration between state registers and the complexity of using electronic services significantly reduce the effectiveness of protecting citizens' rights, especially in personal data. In addition, collective action mechanisms, which would allow affected individuals to pool their efforts to protect their digital rights, remain practically non-existent in Ukraine.

In this regard, in the Ukrainian context, it is necessary not only to further improve e-justice from a technical point of view, but also to provide regulatory and institutional support for the effective implementation of private enforcement mechanisms. It is necessary to create legal conditions for the filing of collective lawsuits, to clearly regulate the representation of interests of groups of citizens by non-governmental organizations, as well as to expand the powers of digital platforms about liability for violations of the rights of individuals on the Internet.

Continuing with the theme of digitization, it is also important to note that the development

[71] Vasco Pereira da Silva, Kämmerer J.A., Galetta D.-U. (eds.), New Public Tasks in Time of Tension, Pedro Lomba, Development on GDRP Private Enforcement in Portugal, pp.231-244, 2023, URL, Accessed date: 21.06.2025 https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf

[72] Verkhovna Rada of Ukraine, Order of the State Judicial Administration of Ukraine on the Approval of the Concept of the Unified Judicial Information and Telecommunication System, 13.04.2018 № 168, URL: https://zakon.rada.gov.ua/rada/show/v0168750-18#Text, Accessed date: 21.06.2025

of digital technologies has contributed to widening access to information through the creation of electronic platforms, open registers and online services by government institutions. Digitalization has become a catalyst for more effective implementation of the right of access to public information by minimizing the barriers of time, space and bureaucracy. As Eloísa Pérez Conchillo rightly noted[73], "legal systems must adapt to these changes and ensure that citizens have the tools and information they need to hold public and private bodies to account".

In the case of Ukraine, an important step was the adoption of the Law of Ukraine "On Access to Public Information" of 13.01.2011 No. 2939-VI[74], which establishes legal mechanisms for the implementation of everyone's constitutional right to free access to information of public interest. The law details the obligations of public authorities to disclose information, the procedure for submitting requests, the conditions for considering them and the grounds for restricting access. In order to ensure the practical implementation of this right, institutional and technological tools have been implemented, in particular «The Unified State Open Data Web Portal»- https://data.gov.ua, which operates on the basis of Resolution of the Cabinet of Ministers of Ukraine of 21.10.2015 No. 835 "On Approval of the Regulations on Data Sets Subject to Publication in the Form of Open Data"[75]; Prozorro e-procurement platform https://prozorro.gov.ua/uk operates in accordance with: Law of Ukraine "On Public Procurement" dated 25.12.2015 No. 922-VIII[76]; The Unified State Register of Declarations of Persons Authorized to Perform State or Local Self-Government Functions - https://public.nazk.gov.ua/ , which operates in accordance with Law of Ukraine "On Prevention of Corruption" dated 14.10.2014 No. 1700-VII[77]; the electronic document management system of state bodies and the electronic application system are regulated by Law of Ukraine "On Electronic Documents and Electronic Document Management" dated 22.05.2003 No. 851-IV[78]; The Law of Ukraine "On Citizens' Complaints"[79] updated 31.12.2023 No. 393/96-VR as amended; the Law of Ukraine "On Digital Content and Digital Services" dated 02.03.2024 No. 3321-IX[80].

[73]Vasco Pereira da Silva, Kämmerer J.A., Galetta D.-U.(eds.), New Public Tasks in Time of Tension, Eloísa Pérez Conchillo, Transperency and the right of access to public information as pillars of the rule, 2023, p.245, URL: https://editorialescientifica.it/wp-content/uploads/2024/08/eBook-Galetta-New-public-tasks-in-times-of-tension_def.pdf, Accessed date: 21.06.2025

[74]Verkhovna Rada of Ukraine. Law of Ukraine "On Access to Public Information" of 13.01.2011 No. 2939-VI, URL: https://zakon.rada.gov.ua/laws/show/2939-17?lang=en#Text, Accessed date: 21.06.2025

[75]Verkhovna Rada of Ukraine. Resolution of the Cabinet of Ministers of Ukraine of 21.10.2015 No. 835 "On Approval of the Regulations on Data Sets Subject to Publication in the Form of Open Data", URL: https://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF?lang=en#Text, Accessed date: 21.06.2025

[76]Verkhovna Rada of Ukraine. Law of Ukraine "On Public Procurement" dated 25.12.2015 No. 922-VIII, URL: https://zakon.rada.gov.ua/laws/show/922-19?lang=en, Accessed date: 21.06.2025

[77]Verkhovna Rada of Ukraine. Law of Ukraine "On Prevention of Corruption" dated 14.10.2014 No. 1700-VII, URL: https://zakon.rada.gov.ua/laws/show/1700-VII#Text, Accessed date: 21.06.2025

[78] Verkhovna Rada of Ukraine. Law of Ukraine "On Electronic Documents and Electronic Document Management" dated 22.05.2003 No. 851-IV, URL: https://zakon.rada.gov.ua/laws/show/851-15#Text, Accessed date: 21.06.2025

[79]Verkhovna Rada of Ukraine. Law of Ukraine "On Citizens' Complaints", updated 31.12.2023 No. 393/96-VR, URL: https://zakon.rada.gov.ua/laws/show/en/393/96-%D0%B2%D1%80?lang=en#Text, Accessed date: 21.06.2025

[80]Verkhovna Rada of Ukraine. Law of Ukraine "On Digital Content and Digital Services", dated 02.03.2024 No. 3321-IX, URL:

Despite the existence of a specific law, in the Ukrainian Constitution, the right of access to public information is not distinguished as an independent constitutional right but follows from the broader right to freedom of information (Article 34 of the Constitution of Ukraine). In the context of digitization, it is necessary to rethink the legal nature of this right - as an element not only of administrative law, but also of constitutional law.

From an international perspective, this understanding is in line with the practice of the ECHR, particularly the decision in the case of Magyar Helsinki Bizottság v. Hungary (2016)[81], which recognized the right to access public information as an aspect of freedom of expression (Article 10 ECHR), which is particularly important in the digital public sphere.

When considering the issues of digitalization and global warming, it is worth focusing separately on the regulation of the use of artificial intelligence.

Artificial intelligence is fundamentally the result of the development of information technology (IT), and therefore the development of the IT sector is key to the future use of AI in Ukraine. IT infrastructure and access to high-quality data enable the development of technologies that can automate decision-making processes, increase the efficiency of public administration, and ensure transparency and accountability in the interaction between government and citizens. From a constitutional point of view, this process is closely related to the principles of the rule of law, to ensuring the rights and freedoms of citizens.

In this context, it is important to study in detail the EU experience, in the context of modernizing administrative procedures and ensuring transparency in the context of digitization. The analysis of the article "The ReNEUAL Model Rules on EU Administrative Procedure Revisited"[82], which examines important aspects of digital governance and the role of artificial intelligence (AI) technologies in EU administration, underlines the above.

In particular, the ReNEUAL Model Rules on EU Administrative Procedure contain key procedural principles, such as the right to be heard, the obligation to state reasons for decisions and ensuring access to information (ReNEUAL, 2014, Book III, Articles III-2 - III-5)[83], which can be adapted to Ukrainian administrative legislation. The adoption of such principles at the legislative level will contribute to the implementation of good governance, but in the context of

https://zakon.rada.gov.ua/laws/show/3321-20?lang=en#Text, Accessed date: 21.06.2025

[81]ECHR, the case of Magyar Helsinki Bizottság v. Hungary (2016), (Application no. 18030/11), URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-167828%22]}, Accessed date: 21.06.2025

[82] Hofmann, Herwig C. H., Oriol Mir and Jens-Peter Schneider, 'Digital Administration: The ReNEUAL Model Rules on EU Administrative Procedure Revisited', in Diane Fromage (ed.), Jacques Ziller: A European Scholar (European University Institute, 2022), 77–106.

[83] Research Network on EU Administrative Law, Craig Paul, Giacinto della Cananea, Mir Oriol, Schneider Jens-Peter, Tünsmeyer Vanessa M., Wierzbowski Marek, ReNEUAL Model Rules on EU Administrative Procedure, Book III – Single Case Decision-Making,2014, URL: https://www.reneual.eu/images/Home/BookIII-Single_CaseDecision-Making_individualized_final_2014-09-03.pdf, Accessed date: 21.06.2025

digital transformation this is no longer sufficient - it is necessary to enshrine such guarantees also at the constitutional level. This will ensure consistency, predictability and protection of citizens' fundamental rights in the application of automated administrative procedures.

Ukraine can also consider the principles of the Digital Decade for Europe initiative (Digital Decade Policy Programme 2030) - approved by Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022[84], which defines digital rights and principles, including - universal access to digital services, - digital literacy, - protection of privacy and security online, - fair and ethical development of digital technologies. Once again, it should be emphasized that such mechanisms require constitutional support in the form of enshrining rights of access to digital services, protection of personal data and guarantees of transparency of the actions of public authorities in the digital environment.

The key regulatory act in the field of personal data protection is the General Data Protection Regulation — General Data Protection Regulation (Regulation (EU) 2016/679)[85], which in Article 22 provides for the right of an individual not to be the subject of an exclusively automated decision that has legal consequences: it guarantees the procedural rights of citizens and protection against potential discrimination. It is advisable to implement similar provisions in Ukrainian legislation through amendments to the Constitution of Ukraine, by guaranteeing the right to non-automated decision-making, the right to explanation of the logic of algorithms and the right to access and correction of data.

In addition, the Artificial Intelligence Act (AI Act)[86], establishes a pan-European legal framework for the safe, ethical and human rights-based use of AI: includes requirements for transparency, reliability and legal accountability of automated systems. For Ukraine it plays key role: its implementation in Ukraine can help create a regulatory environment that combines innovation with guarantees of respect for human rights, including at the constitutional level, ensuring a balance between the efficiency of public administration and respect for the dignity and autonomy of the individual in the digital age. Ukraine should clearly enshrine at constitutional level the right to protection from discriminatory or unlawful automated decisions, the right to access information on the functioning of algorithms and guarantees of digital rights and freedoms in line with EU standards. This will ensure a balance between innovation and respect for human

[84]European Union. Digital Decade for Europe initiative (Digital Decade Policy Program 2030) - approved by Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022, URL: https://eur-lex.europa.eu/eli/dec/2022/2481/oj/eng, Accessed date: 21.06.2025

[85]European Union. General Data Protection Regulation — General Data Protection Regulation (Regulation (EU) 2016/679), URL: https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng, Accessed date: 21.06.2025

[86]European Union. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689, Accessed date: 21.06.2025

rights in the field of artificial intelligence, which is particularly important for Ukraine in the context of war and the digital transformation of the state. As Prof. Vasco Pereira da Silva [87] points out, technological changes require an updated theoretical approach to constitutional law. In the modern world, legal practitioners need to understand the changing realities to effectively apply the relevant law to the cases under consideration.

2.2 European Integration and Security Strategy in the Constitution: Between NATO aspirations and strengthening national defense

Immanuel Kant's concept of 'perpetual peace' remains one of the most significant philosophical imperatives in European consciousness: humanity must establish political and legal institutions that render a new war not only undesirable, but also impossible. However, the 21st century has shown that we have ignored several alarming signs indicating the resurgence of violence, revanchism, and imperialist thinking in Europe. War has once again become a possibility — even in the heart of Europe[88].

I fully support Prof. Vasco Pereira da Silva position[89] that it is impossible to discuss the security of any state, Portugal included, without considering the context of European and global security. This approach is particularly important for Ukraine, which is at the center of geopolitical challenges and is inextricably linked to European and global security systems. The country's security cannot be considered in isolation because international interdependence and collective protection mechanisms are key to stability. However, this must undoubtedly consider the national interests of Ukraine.

Ukraine is a shining example of a nation that has spent decades seeking security through cooperation, promoting global peace and upholding international law — even at its own expense. Yet despite these efforts, Ukraine has found itself at the epicenter of the bloodiest conflict in Europe since World War II.

To understand Ukraine's current constitutional and strategic dilemmas, we should make the trip through the 20th and 21st centuries — a path marked by deception, missed opportunities and enduring resilience. It is only through this lens that we can grasp the urgency of constitutional reform today, which aims to enshrine security as a guarantee built into the nation’s fundamental law, rather than as a promise from others.

As the Ukrainian Soviet Socialist Republic, Ukraine gained a seat in the United Nations in

[87]Oppermann Buck-Heeb., Automatize Systeme, Prof. Vasco Pereira da Silva, The New World of Information and New Technologies in Constitutional and Administrative Law, Automatize Systeme, 2022, p. 427
[88]Revue de l’Union Europeenne, par Prof. Vasco Pereira da Silva, No. 685, Lef’ebvi’e dalloz, Fevrier 2025, p.105
[89] Pereira da Silva, Vasco, La Constituzione di oggi e di domani, PasSaggi Constituzionali, ETPbooks, Anno IV-Numero 2-Dicembre 2024, ISBN: 978-618-5752-41-5.p. 67

1945, not to represent its own national interests, but to strengthen the USSR's influence on the international stage. Along with the Byelorussian SSR, the Ukrainian SSR became one of two additional votes for the Soviet Union in the UN General Assembly. This decision was part of Soviet diplomatic strategy and had no real bearing on Ukrainian statehood or independent foreign policy. According to international obligations, Ukraine was to create its own People's Commissariat of Defense as one of the conditions for formal recognition in the UN. However, this body was never created, and all defense issues remained the exclusive competence of Moscow. Thus, even in the status of a "founding member" of the UN, Ukraine remained deprived of real sovereignty and was used exclusively as an instrument of the USSR's foreign policy. These historical facts once again emphasize: Ukraine's presence on the international arena without real control over its own security and defense, which was only an illusion of statehood to increase the international authority of the USSR.

Although, the sovereign rights of Ukraine are enshrined in fundamental international legal documents. So, Article 2(4) of the United Nations Charter[90] expressly prohibits any State from threatening or using force against the territorial integrity or political independence of another State. This principle is a cornerstone of the modern international order. However, Russia's aggression against Ukraine in 2014 and subsequent full-scale invasion in 2022 demonstrated that, in practice, even fundamental principles of international law do not deter violators if they are not backed by an effective coercive mechanism. The situation with the Budapest Memorandum of 1994[91] is another striking example of this. Ukraine voluntarily relinquished the world's third-largest nuclear arsenal in exchange for security assurances from Russia, the United States, and the United Kingdom. In addition, the participating states, including the USSR (the Russian Federation being its successor), undertook to respect the sovereignty, political independence and inviolability of the borders of all European states in the Final Act of the Conference on Security and Cooperation in Europe (Principle 2,3,4 Helsinki, 1975)[92]. However, when these guarantees were violated and Ukraine’s territorial integrity was grossly infringed upon, none of the guarantors were able or willing to provide actual protection. The guarantees turned out to be political rather than legally binding, which only deepened the crisis of confidence in the international security system.

When analyzing the legal basis of these documents, it should be noted that the UN Charter is a binding international treaty for all members of the organization. It is a clear legal imperative

[90]UN, The United Nations Charter, Article 2(4), 1963, URL: https://www.un.org/en/about-us/un-charter/full-text, Accessed date: 21.06.2025

[91]OSCE, The Budapest Memorandum, 1994, URL: https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf, Accessed date: 21.06.2025

[92]The Conference on Security and Cooperation in Europe (CSCE). The Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975), Principles 2, 3, 4, URL: https://www.osce.org/files/f/documents/5/c/39501.pdf, Accessed date: 21.06.2025

that is subject to enforcement and controlled by international judicial bodies, such as the UN International Court of Justice. In contrast, the Helsinki Act of 1975 is an informal political agreement that contains principles mandatory for implementation. However, it lacks the rigid legal force of a treaty with coercive mechanisms. It is rather declarative and political in nature, focusing on trust and cooperation. The Budapest Memorandum of 1994 is a political memorandum, not a treaty. It did not provide specific, legally binding mechanisms for responding to violations of guarantees. Meanwhile, the European security framework is supplemented by the 2007 Treaty of Lisbon (Article 2, 3(2), 42)[93], which sets out the European Union member states' obligations regarding collective defense and respect for other states' sovereignty. However, as Ukraine is not an EU member, it is not subject to the Treaty of Lisbon's direct legal mechanisms.

The 1996 Constitution of Ukraine did not directly address the regulation of the state's nuclear status. Instead, relevant decisions were made through international treaties and political agreements, primarily the Budapest Memorandum and agreements with Russia, the United States, and Great Britain. In other words, the Ukrainian Constitution did not contain clear mechanisms for controlling or protecting national nuclear assets, and state sovereignty in this area was partly 'delegated' to international guarantees. This created a vulnerability: Ukraine voluntarily renounced nuclear weapons in exchange for political guarantees of security which, as experience has shown, were poorly provided for legally and practically.

This failure of enforcement mechanisms highlighted an important truth: without clear constitutional enshrinement of internal defense capabilities, no international treaty can guarantee security. As a result, Ukraine became a victim of broken international agreements, which, in my opinion, constitutes a de facto breach of trust. This highlights the importance of modern constitutional enshrinement of national security issues, clear mechanisms for resource mobilization, and legal support for Ukraine's integration into its own security system, as well as into collective security systems such as the EU and NATO, to avoid similar risks in the future.

Building on this, it is worth noting that, following its independence in 1991, Ukraine sought real security and international support from Western institutions. One of the first steps in this process was Ukraine's accession to NATO's Partnership for Peace program in 1994[94]. This program facilitated cooperation with the Alliance, particularly about defense sector reform, raising military standards, and participating in peacekeeping operations. As part of the Partnership for Peace program, Ukraine took part in peacekeeping missions in the Balkans, particularly in UN and

[93]European Union. The Treaty of Lisbon, 2007, Article 2, 3 (2), 42, URL: https://eur-lex.europa.eu/eli/treaty/lis/sign/eng, Accessed date: 21.06.2025

[94]NATO's Partnership for Peace program, 1994, URL: https://www.nato.int/cps/en/natohq/topics_50349.htm, Accessed date: 21.06.2025

NATO operations in Croatia, Bosnia and Herzegovina and Kosovo. Although Ukraine had no direct national interests in these conflicts, the participation of Ukrainian
soldiers were a conscious choice in support of international peace and stability. The losses and sacrifices Ukraine has endured in these missions highlight its commitment to being a responsible partner in the global security system. In April 1997, Ukraine and the North Atlantic Alliance signed the Charter on a Distinctive Partnership[95], an important milestone in the development of Ukraine's cooperation with NATO. This document established a framework for in-depth political dialogue and practical cooperation in security and defense matters. Notably, the Charter provided for expanded cooperation in defense, information exchange, joint exercises and support for reforming the Armed Forces of Ukraine to align with NATO military standards. The document also emphasized the importance of developing defense management institutions and supporting peacekeeping operations under the auspices of NATO and the UN, as well as maintaining democratic civilian control over the military. The document emphasized the importance of developing defense management institutions and supporting peacekeeping operations under the auspices of NATO and the UN, as well as maintaining democratic civilian control over the military. However, the Charter did not contain a clear commitment by the Alliance to provide Ukraine with a Membership Action Plan or security guarantees. This indicated the limited political will of some NATO member states for further enlargement. While this document symbolized Ukraine’s desire to join the Euro-Atlantic security system, there were still significant obstacles to full membership relating to the need for reforms and consistent political support from the Alliance. Thus, while important, the 2007 Charter was insufficient for Ukraine to join NATO. At the 2008 Bucharest Summit[96], Ukraine was granted political confirmation of its Euro-Atlantic aspirations. However, it did not receive a Partnership Action Plan. While the Alliance expressed support for Ukraine's and Georgia's future membership, no clear date or action plan was proposed. This became a kind of 'deferred promise' — a reminder that, despite Ukraine's long-standing cooperation and efforts, the door to NATO remains closed.

Why is Ukraine still 'knocking on closed doors'? Paradoxically, despite active peacekeeping efforts, there is still insufficient political will in the West to accept Ukraine into NATO. In my opinion, the reasons lie deep within the issue and are multifaceted, not only relating to certain shortcomings in Ukraine.1) Geopolitical risks: Ukraine's NATO membership would

[95]NATO and Ukraine. Charter on a Distinctive Partnership, 1997,URL: https://www.nato.int/cps/en/natohq/news_89037.htm#:~:text=Fifteen%20years%20ago%2C%20on%209%20July%201997%2C%20the, established%20the%20NATO-Ukraine%20Commission%20to%20take%20work%20forward, Accessed date: 21.06.2025

[96]NATO. The Declaration of Bucharest Summit, 2008, URL: https://www.nato.int/cps/en/natohq/official_texts_8443.htm, Accessed date: 21.06.2025

mean a direct clash with Russia, raising concerns about escalating the conflict and threatening the security of allies. 2) The political will of allies: Different positions on NATO expansion exist within Europe and the United States, hindering the integration process.

The following question inevitably arises: does Ukraine need to continue knocking on these closed doors? Yes, Ukraine needs to be part of the collective security system. This is required by both military logic and geopolitical reality, given that Ukraine has become the front line of the entire Euro-Atlantic civilization. However, Ukraine's experience shows that relying solely on political promises without strengthening its own defense is utopian. First and foremost, Ukraine must become a strong country so that it can be invited to participate as a partner. It is also important to develop joint defense projects as part of the West's collective defense policy.

In his numerous addresses, particularly on 24 February 2022, Putin repeatedly cited the 'threat of Ukraine's rapprochement with West: he portrayed the conflict as one directed against the West as a whole. In a narrative full of lies, too detailed to be dismissed as mere nationalist fervor, he claimed that the West sought to use Ukraine as a springboard to invade and destroy Russia.' as one of the key reasons for the invasion[97]. However, these arguments merely serve as a smokescreen for aggression; the real goal is to subjugate Ukraine, destroy its sovereignty and reimpose Kremlin influence. The irony, in my opinion, is that NATO's refusal to accept Ukraine in 2008 became the incentive for Russia to take aggressive action in 2014 and ultimately declare war.

When the US Congress passed the Lend-Lease Act for Ukraine in 2022[98], it was perceived as a return to the times of World War II, as it is a key factor in US military support for Ukraine. However, from a legal perspective, Lend-Lease is a law on lending, not free support. This example proves once again that even legally formalized promises are not always fulfilled.

US President Donald Trump has repeatedly promised to end the war within 24 hours[99]. But when will it be, if it will be and at what price? Statistics from the UAlosses[100] website show that at least 60,435 soldiers have died since 2022 to November 2024. According to OHCHR, at least 12,456 civilians, including 669 children, were killed between February 2022 and December 31, 2024. 28,382 civilians, including 1,833 children, were wounded. "The actual figures are probably much higher," Dicarlo added (Deputy Secretary General of the UN for political and peacebuilding

[97]Fisher M. The New York Times, Putin’s Case for War, Annotated, 24.02.2022, URL: https://www.nytimes.com/2022/02/24/world/europe/putin-ukraine-speech.html, Accessed date: 21.06.2025

[98]U.S. Congress. Gov. 117th Congress, S.3522 - Ukraine Democracy Defense Lend-Lease Act of 2022, Public Law 117-118, 05.09.2022, URL: https://www.congress.gov/bill/117th-congress/senate-bill/3522/text, Accessed date: 21.06.2025

[99]The Economic Times, from pledging to end Russia-Ukraine war in 24 hours to being 'sarcastic', how Trump backed from his promise, 11.05.2025, URL: https://economictimes.indiatimes.com/news/international/global-trends/us-news-trump-from-pledging-to-end-russia-ukraine-war-in-24-hours-to-being-sarcastic-how-trump-backed-from-his-promise/articleshow/121073641.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, Accessed date: 21.06.2025

[100]UAlosses, official website, 2024, URL: https://ualosses.org/uk/soldiers/, Accessed date: 21.06.2025

issues)[101]. According to the World Bank's data, prepared jointly with the Government of Ukraine, the European Commission and the United Nations, presented in March 2023, considering a full year of war, as of February 24, 2023, direct damage in Ukraine has reached over US$135 billion, with housing, transport, energy, and commerce and industry the most affected sectors. Disruptions to economic flow and production, as well as additional expenses associated with the war, are collectively measured as losses and amount to some US$290 billion. Ukraine's gross domestic product (GDP) shrank by 29.2 percent in 2022, and poverty increased from 5.5 percent to 24.1 percent in 2022 (based on the poverty line of US$6.85 per person per day). Reconstruction and recovery needs, as of February 24, 2023, are estimated at about US$411 billion[102]. CNN and the Institute for the Study of War calculated that 'since the 2022 invasion, Ukraine has lost control of around 11% of its territory'. However, if you include territorial losses since 2014, the figure rises to around 18%[103].Are the Ukrainian losses in real life commensurate with this price? Once again, we see empty promises. In my opinion, they look more like political populism than a strategic plan. Unfortunately, the war continues. It was not possible to stop it within 24 hours, as some had promised, nor has it been possible to stop it during all these years of brutal fighting and Ukrainian losses.

Therefore, as I have already noted, I believe that Ukraine's primary task is to increase its own defense potential and participate in joint projects to bolster the collective defense capabilities of the West, rather than standing with an outstretched hand and increasing external debt, which will burden future generations. This could ultimately lead to Ukraine becoming a de facto resource colony. In my opinion, we have a responsibility not only to ourselves, but also to future generations.

In this respect, I would also like to mention about EU financial support mechanisms, particularly Ukraine Facility. Having carefully studied the new Financial Instrument of the European Union for Ukraine – Ukraine Facility[104], which provides for the allocation of up to 50 billion euros from 2024 to 2027, I can see both opportunities for support and serious risks to the country's economic and political stability. The mechanism is based on three pillars: direct financial assistance to the Ukrainian government in the form of grants and loans; an investment platform to attract private and public investment in the country's reconstruction; and technical assistance,

[101]UN News, Global view Human destinies, Ukraine: at least 12,456 civilians have been killed since the beginning of the full-scale invasion of the Russian Federation, 16.01.2025, URL: https://news.un.org/ru/story/2025/01/1460441, Accessed date: 21.06.2025
[102]The World Bank. Rapid Damage and Needs Assessment (RDNA 2), No 180951, 2023, URL: https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099184503212328877/p1801740d1177f03c0ab180057556615497, Accessed date: 21.06.2025
[103]CNN World, Soph Warnes, visualizing how Ukraine has changed in the 3 years since Russia's full-scale invasion, 03.03.2025, URL: https://edition.cnn.com/2025/02/23/world/charts-ukraine-war-status-dg/index.html, Accessed date: 21.06.2025
[104]European Council, The Ukraine Facility, 13.06.2025, URL: https://www.consilium.europa.eu/en/policies/ukraine-facility/#:~:text=The%20Ukraine%20Facility%20provides%20predictable%20financial%20support%20for,unprecedented%20challenges%20of%20supporting%20a%20country%20at%20war, Accessed date: 21.06.2025

support for municipalities and civil society, and subsidies for interest on loans.

However, despite the declaration that 78% of the aid will be non-refundable (section 2), a detailed analysis shows that most of the financial support will be provided in the form of long-term loans (paragraphs 74–77), with repayment starting in 2033 and loans lasting up to 35 years. Repayment of the principal amount is only provided from 2033[105]. The possibility of requesting an annual interest subsidy is offered, but automatic exemption from interest or administrative costs is not guaranteed. Paragraph 83 provides for the creation of a Ukrainian guarantee for investors, but there is no clear list of the assets or instruments that will underpin it. This carries the risk of losing control over national assets, and if implemented incorrectly, Ukraine could become a resource colony. In my opinion, it also creates an asymmetric situation: aid is declared as support, but it could become a long-term debt burden. Under the Constitution of Ukraine (Articles 85, 92, 95 and 96 in particular), issues relating to the state budget, debt policy, the use of natural resources and international obligations should be resolved exclusively by the Ukrainian Parliament

- Verkhovna Rada. Significant transfers of external obligations without sufficient parliamentary oversight, or the signing of memoranda with opaque conditions, contradict the principle of popular sovereignty enshrined in Article 1 of the Constitution. Therefore, the hasty or opaque acceptance of debt obligations may be unconstitutional.

Ukraine does not have sustainable experience in administering such complex programmes and risks spending a significant proportion of the funds on administration, audits, reporting and legal support without having a real impact on the economy. This is why it is important that the mechanisms are as simplified, transparent and effective as possible, to avoid aid being swallowed up by the bureaucratic machine. To this end, appropriate constitutional amendments are also necessary to enshrine clear legal mechanisms for managing international financial assistance, ensure the transparency and accountability of government bodies and strengthen the state's institutional capacity in the areas of financial control and reform. This constitutional framework would guarantee that aid is used effectively, in accordance with national interests, while taking responsibility for future generations into account.

As a nation, we have no right to sacrifice the future of future generations for the sake of short-term promises or dubious political memoranda. Aid should be provided on equal terms, with respect for Ukraine's sovereignty, rather than creating debt dependence. To achieve this, it is important to increase our own defense capabilities, create our own defense technologies, protect our economic sovereignty, and develop the military-industrial complex, as well as joint defense

[105]Bergmann Julian, Die Europäische Union und der Wiederaufbau der Ukraine – bereit für die Herkulesaufgabe? Info Schnelldienst, 76. Nr.04, pp. 06-09, 2023, URL: https://www.ifo.de/publikationen/2023/aufsatz-zeitschrift/wiederaufbauplan-wie-gelingt-der-neuanfang-der-ukraine, Accessed date: 21.06.2025

projects with the EU and other partners. As for NATO, I firmly believe that closer integration is important, but this should depend on the development of the geopolitical situation, Ukraine's national interests and how far previously closed doors will be opened to Ukraine. This issue undoubtedly requires broad public debate and transparent political discussion. Such constitutional regulations are vital in clearly defining the roles and responsibilities of state institutions in matters of national security and foreign policy, including the process of joining military alliances. This would ensure a balance of power, guarantee parliamentary control and protect citizens' rights throughout the process.

Against the backdrop of the European Council's recent conclusions[106], the emphasis placed on the necessity for a substantial increase in defense spending, both within the European Union and within the national budgets of its Member States, is particularly noteworthy. This includes the activation of domestic resources and the mobilization of new sources of financing, including credit mechanisms, direct subsidies and grant instruments. This approach sets a new political and financial precedent that is also of direct importance to Ukraine. As a country that currently acts as Europe's primary defense against aggression, Ukraine must negotiate with the EU on more than just the amount of financial assistance. It must also address the nature of this assistance, shifting it from debt instruments to a true partnership involving joint investments in security, grants, direct budgetary support, and collaboration in defense technology. In this context, amendments to the Constitution are important, which would clearly allow Ukraine to become a full-fledged player within the European Defense Technological and Industrial Base (EDTIB)[107]. Currently, the Constitution sets out the strategic direction for EU and NATO membership (clause 5 of Article 85, the preamble, Articles 102 and 116) and also defines defense and security as matters for the whole population (Article 17). However, modern challenges and a new level of integration require the constitutional framework to be updated — particularly about providing a clearer definition of Ukraine’s role within the European collective security system.

It is important to note that Ukraine’s European and Euro-Atlantic integration requires considering the global security dimension. Africa plays an important role in this dimension as a region of strategic importance to the EU and NATO. The European Union implements policies to stabilize and develop the continent economically, as well as to counter external threats. Meanwhile, NATO participates in missions to maintain security and bolster the defense capabilities of partners

[106]European Council, European Defense, European Council conclusions on European defense, 6 March 2025, URL: https://www.consilium.europa.eu/en/press/press-releases/2025/03/06/european-council-conclusions-on-european-defence/, Accessed date: 21.06.2025

[107]European Commission, Joint press release: EU-Ukraine Defense Industries Forum bolsters cooperation between Ukrainian and European defense industries, 06.05.2024, URL: https://enlargement.ec.europa.eu/news/joint-press-release-eu-ukraine-defence-industries-forum-bolsters-cooperation-between-ukrainian-and-2024-05-06_en, Accessed date: 21.06.2025

in the southern region. For Ukraine, which seeks to integrate into these structures, involvement in Africa is significant not only diplomatically, but also in terms of security. After all, compliance with the EU's and NATO's strategic approaches implies coordinating actions in regions where these organizations are most active. This is why the relationship between the European, Euro-Atlantic, and African dimensions is becoming a practical necessity. In this context, the African dimension becomes a test for Ukraine's ability to balance a value-oriented foreign policy with global security requirements, a key factor for European and Euro-Atlantic integration.

In such a situation, a strategic task arises: Ukraine cannot exist for long in the format of two parallel African policies — diplomatic and economic and security and intelligence[108].

A dual-vector approach often creates contradictions when successful operational actions undermine diplomatic efforts, distort Ukraine's perception as a constructive international actor, and provoke negative reactions from African governments. Limited resources are an additional factor: an insufficient network of embassies, a weak informational presence, and objective dependence on Western support prevent Ukraine from acting in Africa at the level of other global players. Ultimately, Ukraine faces a dilemma: it must either deepen its global competition with Russia and risk its diplomatic positions or build long-term partnerships, which require consistency, unity of foreign policy, and clear strategic orientation. In this situation, the state must choose between two foreign policy trajectories: the European-Euro-Atlantic and the global. The latter is aimed at participating in extra-regional security processes. Since the constitution sets the boundaries and architecture of foreign policy priorities, Ukraine must update its constitutional provisions to coordinate its strategic course, eliminate institutional contradictions, and ensure unity between foreign and security policy in the new geopolitical reality.

2.3 Technological and digital modernization of the security sector as part of constitutional architecture

In the context of modern warfare and European integration, Ukraine’s defense sector is undergoing rapid technological and institutional transformation. Given Ukraine's growing role as a key security guarantor for Europe, it is necessary to consolidate the new quality of partnership with the EU in strategic documents, including the Fundamental Law. In particular, the technological modernization of the security sector, digital transformation, the development of military engineering and participation in joint European programs should be integrated into the

[108]S. Bowden Carnegia Endowment for international Peace, A Shadow War in the Global South: Are Kyiv’s Operations in Africa Paying Off? Introduction: Ukraine’s Two Africa Strategies, 20.11.2025, URL: https://carnegieendowment.org/research/2025/11/a-shadow-war-in-the-global-south-are-kyivs-operations-in-africa-paying-off?lang=en&utm_source=carnegieemail&utm_medium=email&utm_campaign=announcement&mkt_tok=ODEzLVhZVS00MjIAAAGeQe7x1YtejzNy4p05Ra6x3rrXHcERaH8DkUduhVvBwwoinJ4HCD_Ee7DiRZTzQkoM_Gyt1-2yIYOwOBHmttefIEJzhMnZDTqBtS0vFxgohWAQ, Accessed date: 24.11.2025

constitutional architecture to provide a basis for long-term state stability. This will enable the establishment of institutional mechanisms for Ukraine's full participation in the European defense ecosystem, from production to interoperability.

The deeper integration and institutional change should be supported by the right financial instruments, which would align with Ukraine's strategic role, not only loans rather than direct investment or shared responsibility.

A striking example is the example of the allocation of credit resources specifically for defense is the creation of the European Defense Fund Security for Europe (SAFE)[109] in the amount of 150 billion euros, which was approved by the foreign ministers of the European Union member states during a meeting in Brussels on May 27. This is an important initiative, but it still involves loans, even on preferential terms and a deferral until 2070.

Meanwhile, Ukraine's defense sector is developing rapidly thanks to advanced technological innovations created by domestic companies. This demonstrates an active and flexible approach to the challenges of modern warfare.

Ukrainian companies are achieving excellent results in critical areas such as anti-drone systems, high-precision weapons, smart minefields, robotic complexes, and digital data processing for combat planning. The second Ukraine-EU Defense Forum took place in Brussels on 12 May 2025: an important step in deepening the cooperation between Ukraine and the EU, with the creation of a Task Force to coordinate defiance sector cooperation, signed the Memorandum of Cooperation, it also provided a unique platform for Ukrainian companies and start-ups to showcase their innovative developments. Ukrainian enterprises have achieved significant success in critical areas such as anti-drone systems, high-precision weapons, smart minefields, robotic complexes, and digital data processing for combat operation planning. Ukraine already has ballistics and missiles of its own production, no worse than Taurus or Storm Shadow. Ukrainian engineers' solutions are not only distinguished by their efficiency, but also by their extraordinary adaptability to modern combat conditions — from working without GPS to withstanding powerful electronic warfare systems. The participation of companies such as Legit Force, Farsight Vision and Frontline in the forum demonstrated that Ukraine is not only maintaining a competitive position but setting the pace for innovation. Legit Force develops intelligent, coordinated, remotely controlled minefields that are safe for soldiers while effectively neutralizing the enemy. Rather than consisting of individual mines, the system comprises a network of interconnected cells, enabling

[109]European Commission, European Defense Fund Security for Europe (SAFE), May 2025, URL: https://commission.europa.eu/strategy-and-policy/eu-budget/eu-borrower-investor-relations/safe_en; European Commission, EU Member States endorse €150 billion SAFE defense loan instrument to boost European defense capabilities, 27.05.2025, URL: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1340, Accessed date: 21.06.2025

the minefield to function as a single organism. It is equipped with sensors and gauges that constantly collect information, based on which it makes decisions, such as whether to continue surveillance or transmit a signal to the commander on a tablet. Another Ukrainian company is developing robotic systems designed to protect military personnel and equipment. The idea is to replace humans with robots in combat missions to reduce risk to personnel. Various models of copter, reconnaissance drone, bomber and automated turret have already been created. Although losses occur due to human error or damage from small arms, these copters are highly resistant to electronic interference. The anti-drone turret is particularly noteworthy as it is effective even against fiber-optic controlled drones. It can perform complex tasks such as instantly switching between several moving targets, which would be very difficult for a person to do. This development marked the beginning of new cooperation with foreign partners, with work currently underway with a German company that plans to integrate the Ukrainian anti-drone system into its defense complex[110].

In addition to robotic systems, Ukrainian defense enterprises are actively developing new-generation ballistic missiles. For instance, Fire Point is developing the FP-7 and FP-9, which resemble the Russian 48N6 anti-aircraft missiles from the S-400 system but differ in keyways. The Ukrainian missiles are fully composite, making them lighter and allowing for an increased flight range. The FP-7 is planned to be codified by the end of 2025, with a range of over 200 km; the FP-9 has a range of up to 855 km. While the external resemblance to the 48N6 is evident, Ukrainian specialists developed the guidance and flight control equipment entirely independently, making the missiles fundamentally new in terms of combat capabilities. This approach not only reduces the time required for research and testing but also allows for the quick integration of these systems into the national defense, thereby increasing Ukraine's ability to effectively counter threats and ensure the safety of personnel and strategically important facilities[111].

I would also like to emphasize the successes of the Ukrainian defense industry in developing drones — unmanned aerial vehicles (UAVs) — including effective reconnaissance, strike and "kamikaze" drones. Thanks to their high accuracy, mobility and ability to operate in conditions of active electronic warfare, these drones have become an indispensable tool on the modern battlefield. Bomber strike drones are designed for precision attacks on enemy targets. They carry warheads that can deliver devastating blows to key targets and enemy equipment. These devices are distinguished by their ability to autonomously target with high accuracy, significantly

[110]RFI, Ukrainian weapons as a brand: game-changing technologies, Brussels, 13.05.2025, URL: https://rfi.my/BfC8, Accessed date: 21.06.2025

[111]Defense Express, why do Fire Point FP-7 and FP-9 ballistic missiles look like the 48N6 from the Russian S-400?24.11.2025, https://defence-ua.com/weapon_and_tech/chomu_balistichni_raketi_vid_fire_point_fp_7_ta_fp_9_vigljadajut_jak_48n6_vid_rosijskogo_s_400-20971.html , Accessed date: 24.11.2025

reducing collateral damage. Long-range 'kamikaze' drones are drones that act as ammunition, carrying out an attack by hitting the target. Their compact size makes it difficult to detect and intercept. Due to their ability to hit targets at considerable distances, such drones can destroy strategic enemy facilities while minimizing risks to personnel. Ukrainian drones are highly resistant to electronic warfare (EW), making them effective even in the most challenging combat conditions. They can operate without GPS or with communication interruptions, increasing their reliability. More detailed information about Ukrainian drones can be found at this link[112].

A vivid example of this form of cooperation that Ukraine should actively develop in its relations with the EU and European defense companies is the creation of a joint venture between the German defense company Rheinmetall and the Ukrainian state-owned defense company Ukroboronprom. Initially, the new LLC 'Rheinmetall - Ukrainian Defense Industry'[113], established in 18th of October 2023, focused on maintaining and repairing military equipment supplied by Western partners to Ukraine, as well as localizing the production of leading German equipment models. It is planned that, in the future, the enterprise will produce modern combat vehicles, including Fuchs armored personnel carriers, which are already used by the German army, and Panther KF51 tanks, which are specifically designed to meet the needs of the modern battlefield. It is expected that this enterprise will become a fully-fledged production platform, capable of meeting Ukraine's current needs and becoming part of the European collective defense system. This project offers opportunities for technology transfer, job creation and deeper strategic integration of Ukraine into the European defense sector. This example shows that Ukraine has the potential to be more than just a recipient of aid; it can also be a full-fledged production and strategic partner. And it is thanks to such partnerships that Ukrainian weapons have every chance of becoming a world-class state brand, and Europe has a reliable ally in its own technological strengthening.

Therefore, when negotiating with the European Union, the focus should be on developing joint high-tech defense enterprises that will become part of the European Defense Technological and Industrial Base (EDTIB), rather than simply expanding the volume of preferential lending. This form of partnership will have a long-term positive impact on Ukraine's security, economy and independence.

As I noted above, it is crucial to implement targeted constitutional and legislative changes that clearly define Ukraine’s legal framework for participating in European defense cooperation.

[112]Ukraine.Today.org., Militarniy, Drones made in Ukraine: reconnaissance, bombers and long-range kamikazes, 19.06.2025, URL: https://militarnyi.com/uk/articles/drony-zrobleni-v-ukrayini-rozvidnyky-bombery-ta-dalekobijni-kamikadze/, Accessed date: 21.06.2025

[113]LLC 'Rheinmetall - Ukrainian Defense Industry', official website, 2023, URL: https://www.rheinmetall.com/en/company/subsidiaries/rheinmetall-ukrainian-defense-industry, Accessed date: 21.06.2025

This includes enshrining the principles of establishing joint defense enterprises with EU member states, technology transfer mechanisms, and state oversight, transparency and accountability in the implementation of international defense industrial projects. Constitutional recognition of these priorities will ensure that investments in advanced technologies, research and development, and the development of skilled personnel are sustainable and protected from political fluctuations.

This will transform Ukraine’s position from one of dependency on aid to an equal participant in the European system of deterrence, security and innovation. This will enable Ukraine to evolve from a consumer to a shaper of Europe's defense architecture, integrating into the European Defense Technological and Industrial Base (EDTIB) as a full member. This will lay the groundwork for long-term economic self-sufficiency, strengthen state sovereignty, and ensure the effective implementation of the principle of common security.

Conclusions to the 2d Chapter:

Modern digital processes and globalization in general, large-scale cyberattacks are rapidly and significantly transforming legal systems, which requires the modernization of legislation to be able to guarantee the protection of digital rights, cybersecurity and the security of critical digital infrastructure. The 1996 Constitution of Ukraine does not contain direct directives and provisions on digital security or personal data protection, which requires its updating. The protection of personal data and the development of digital justice are another strategic component of the modernization of the legal system. The right to access information is not defined separately in the Constitution, even though it is recognized as a fundamental right in international practice. The development of information technologies and artificial intelligence increases the efficiency and transparency of public administration. However, it also requires constitutional guarantees of citizens' rights, such as the right to an explanation of AI decisions, protection from discrimination, and access to data. Ukraine should adopt the relevant European experience in this area, such as the ReNEUAL project, the Digital Decade, the GDPR and the AI Act, and enshrine these rights in the constitution.

Historically, Ukraine has been subject to external control and has not had effective guarantees of sovereignty. Despite international agreements such as the UN Charter, the Helsinki Act and the Budapest Memorandum, Ukraine's territorial integrity has not been protected, as evidenced by Russian aggression since 2014. The abandonment of nuclear weapons, or rather their free transfer to Russia under political promises without any legal basis, the lack of clear internal protection mechanisms in the constitution, have turned Ukraine into a victim of the situation. Therefore, international security guarantees remain only formal, unless they are supplemented by a legislative and institutional mechanism.

Since 1991, Ukraine has been integrated into the Euro-Atlantic security system: participation in the NATO Partnership for Peace program, as evidenced by its participation in peacekeeping missions, and the signing of the NATO Cooperation Charter in 1997. However, NATO's doors, no matter what, are still closed to Ukraine. In my opinion, the most important thing for Ukraine is to strengthen its own defense potential and develop joint defense projects with Western partners. Ukraine's losses from the war are enormous and, in a humanitarian sense, generally irreparable. At the same time, international aid carries the risks of deepening debt dependence and loss of economic sovereignty, which requires transparency, control, and constitutional guarantees from Ukraine. Management of financial assistance and national security must be strengthened legislatively and institutionally to protect the interests of both current and future generations of Ukrainians.

It is cooperation with EU countries in the field of defense technologies (for example, the Rheinmetall–Ukroboronprom joint venture) that paves the way for Ukraine's participation in the European Defense Technological and Industrial Base (EDTIB). Negotiations with the EU should focus not only on the volume of financial assistance, but also on the formation of partnerships that include technology transfer, joint ventures and state control. Digital modernization and compatibility with the EU in terms of interoperability, information exchange and coordination of operations should find their ultimate enshrinement, first in the Constitution, to ensure long-term stability and investment protection. Such changes will allow Ukraine to move from a dependent recipient of assistance to an equal participant in the European security system, which will undoubtedly lay the foundation for sustainable development, security and prosperity of Ukraine and Europe as a whole.

3. The Green Deal and human rights in the updated constitution

3.1 Environmental rights as a fundamental element of modern constitutionalism

In an era of rapid technological development and intensive natural resource use, environmental issues have become one of the most important topics in modern society. For Ukraine, which is currently experiencing a large-scale military conflict, environmental protection issues are particularly urgent. Military action causes significant environmental damage, worsens citizens' quality of life and threatens the country's ecological security. In such circumstances, environmental rights not only contribute to sustainable development, but also constitute an essential component of national security and constitutional guarantees.

As of 24.02.2025, since the beginning of the full-scale invasion of Ukraine, more than 7.5

thousand cases of environmental crimes committed by Russia have been recorded[114]. This phenomenon goes far beyond environmental damage and poses a threat not only to the natural environment, but also to the lives, health and well-being of millions of people, including future generations. The problem of environmental destruction in Ukraine is not new. The accident at the Chernobyl Nuclear Power Plant (NPP - Kyiv region)[115] in 1986 became one of the largest man-made disasters in the history of the Ukrainian Soviet Socialist Republic (USSR). The consequences of this event extended beyond the borders of one republic, threatening the ecosystems of Eastern Europe as a whole. At that time, the Ukrainian SSR was an integral part of the Soviet Union, which resulted in centralized management by the USSR. Decisions were made in Moscow, and the scale of the accident was concealed, as well as the consequences, which were underestimated at the state level. Chernobyl clearly demonstrated that the destruction of nature can be global and long-lasting, as well as no less dangerous than any form of armed violence. At the same time, the Soviet authorities cynically hushed up this tragedy. For several days, they did not inform citizens or the international community about the scale of the disaster. This put millions of people at risk. This silence was not only irresponsible, but also offensive, laying the foundation for distrust in the state as a guarantor of environmental safety. The Russian Federation, the successor to the USSR, inherited not only assets, but also a political culture of concealing and distorting the truth. Its current actions in Ukraine—the deliberate destruction of Ukraine's natural environment during wartime—are ecocide and a direct continuation of the same logic: denial, concealment, and disregard for the law.

Now, returning to the present, on February 24, 2022, Russian troops entered the Chernobyl Nuclear Power Plant exclusion zone. As a result, Ukraine lost control of the automated radiation background monitoring system. In early March, the Chernobyl NPP and all nuclear facilities in the exclusion zone were left without electricity due to the actions of the occupation forces. This affected the storage facilities for spent nuclear fuel and the new safe confinement. A month later, the Russians left the Chernobyl NPP exclusion zone, taking equipment worth over

$135 million with them. After leaving the Chernobyl NPP, the Russian occupiers continued the practice of nuclear blackmail at the Zaporizhzhia Nuclear Power Plant in Enerhodar, which is also occupied. The largest nuclear power plant in Ukraine has been under Russian control since March 3, 2022. Due to the invaders' irresponsible actions, the Zaporizhzhia Nuclear Power Plant (ZNPP) has been repeatedly left without electricity, significantly increasing the risk of large-scale

[114]News. pravdatutnews.com. Russia has committed over 7,500 environmental crimes in Ukraine since the start of the full-scale invasion, 24.02.2025, https://pravdatutnews.com/society/2025/02/24/55739-rosiya-skoyila-ponad-75-tysyachi-ekologichnyh-zlochyniv-v, https://www.youtube.com/watch?v=x6vEoH3hBA8, Accessed date: 24.11.2025

[115]S.Plokhiy, History.com. How Soviet Propaganda Shaped the Response to the Chernobyl Disaster. 10.05.2018, https://www.history.com/news/chernobyl-disaster-coverup , Accessed date: 24.11.2025

accidents with potentially catastrophic consequences[116].

According to Article 16 of the Constitution of Ukraine, ensuring ecological safety and preserving ecological balance within Ukraine is the responsibility of the state and "the business of the entire Ukrainian people." In wartime, effectively carrying out this function depends on the quality of documentation of crimes, proper legal qualifications, and thorough investigations that lead to the prosecution of the perpetrators. Another blatant example of ecocide in Ukraine during wartime was the Russian bombing of the Kakhovka hydroelectric power station on June 6, 2023[117] resulting in the release of 18.2 cubic meters of water. This resulted in the destruction of the local ecosystem, mass fish deaths, flooding of over 11,000 hectares of forests, disappearance of significant portions of rare flora and fauna, flooding of over 3,000 square kilometers of territory, destruction of Ramsar sites, and pollution of the waters with oil products and chemicals. Tens of thousands of people were affected, and hundreds of settlements were left without a water supply.

This was not an accidental consequence of hostilities — it was a deliberate act of destruction with predictable, long-term environmental consequences.

Regarding Russian ecocide, it's important to note that greenhouse gas emissions caused by war, reconstruction, wildfires, energy infrastructure damage, refugee displacement, and civil aviation increased by 30%, or 55 million tons of CO_2 equivalent, during the third year of the war (February 24, 2022, to February 23, 2025). This brings the total emissions since the invasion began on February 24, 2022, to 230 $MtCO_2e$. These emissions are equivalent to the annual emissions of Austria, Hungary, the Czech Republic, and Slovakia combined, or the annual emissions of 120 million cars that run on fossil fuels[118].

As a result of Russia's full-scale aggression, Ukrainian nature reserves are also undergoing systematic and deliberate destruction. Holy Mountains National Nature Park[119]is subjected to daily enemy shelling, which leads to large-scale fires and detonation of ammunition in forest areas. On July 18, another fire was recorded because of shelling - the forest floor, tree crowns were burning, and explosions from shells occurred. Earlier, on August 3, the fire covered an area of 2 hectares. In total, about 80% of the national park's forest stands, which amount to over 9.5 thousand hectares, were destroyed. Meanwhile, barbaric acts against biodiversity are taking place. For example, the

[116] Babenko M., Horsemen of Ecocide. What are the biggest environmental crimes committed by Russia in Ukraine? 07.06.2023, https://thepage.ua/ua/economy/golovni-ekologichni-zlochini-rosiyi-yakoyi-shkodi-zavdala-rf-dovkillyu-ukrayini Accessed date: 24.11.2025

[117]Odusanwo V. Ukrainian Crisis media centre. The price of ecocide: how russian aggression destroys ukraine's nature. UACrisis. 26.11.2024, URL: https://uacrisis.org/en/the-price-of-ecocide-how-russian-aggression-destroys-ukraine-s-nature Accessed date: 24.11.2025

[118]Lennard de Klerk, Ecoaction, Climate damage caused by Russia's war in Ukraine: 24 February 2022 – 23 February 2025, https://en.ecoaction.org.ua/?_gl=1%2Av6adfs%2A_gcl_au%2AMTUyODM2ODMwMy4xNzUzMzQyMDgy, Accessed date: 24.11.2025

[119]Digest of key consequences of Russian aggression for the Ukrainian environment for July 13 - July 26, 2024, 26.07.2024, https://ecozagroza.gov.ua/news/151 Accessed date: 24.11.2025

occupying authorities illegally removed twelve Chapman's zebras, a rare species listed on the Red List of the International Union for Conservation of Nature, from the Askania-Nova biosphere reserve. The zebras were exchanged for domestic animals that have no conservation value. In 2023, protected species such as bison, David's deer, and Przewalski's horses were also stolen.

In March 2022, the Ministry of Environment of Ukraine created a working group to document crimes against the environment, with the participation of Ecodia. Since February 24, 2022, after the start of Russia's full-scale war against Ukraine, the Ecodia platform[120] has been monitoring cases of potential environmental damage caused by Russian aggression. Also, a state portal "EcoZagroza" (“EcoThreat”) was created in Ukraine (https://ecozagroza.gov.ua/). This online resource, developed by the Ukrainian Ministries of Environmental Protection and Natural Resources and Digital Transformation, plays a crucial role in monitoring, documenting, and analyzing environmental crimes related to war. The platform provides access to an interactive map of environmental incidents and a database of violations. It also allows citizens to report new cases of environmental crimes. "EcoThreat" aims to increase transparency, coordinate efforts between state bodies and the public, and document environmental damage as potential evidence in international legal proceedings against the aggressor state.

These initiatives are an important step toward institutionalizing environmental responsibility during wartime. However, despite the growing efforts of state institutions and civil society to document and evaluate environmental damage, the current legal and constitutional mechanisms are insufficient to ensure effective environmental protection and restoration.

The scale of environmental damage caused by military aggression makes it clear that Ukraine's current constitutional framework, while declaring environmental protection a duty of the state, does not provide sufficient mechanisms for its effective implementation. Therefore, the constitution must be updated to strengthen the environmental aspect of national security. Clear provisions should be introduced that stipulate the state's duty to prevent and respond to ecocide, guarantee environmental justice, and ensure the restoration of ecosystems damaged by war. These changes would align the Fundamental Law of Ukraine with modern international environmental standards, particularly the principles of the EU Green Deal and sustainable development. They would also demonstrate the country's commitment to integrating environmental protection into its fundamental constitutional values.

The need to modernize the constitution in this regard, however, should not be based on existing constitutional provisions that recognize environmental rights as an integral part of human

[120]Ecoaction,https://en.ecoaction.org.ua/?_gl=1%2Av6adfs%2A_gcl_au%2AMTUyODM2ODMwMy4xNzUzMzQyMDgy Accessed date: 24.11.2025

rights protection. Understanding how these rights are currently enshrined in Ukraine's constitution allows us to identify gaps and areas requiring further development to ensure their effective implementation.

The Constitution of Ukraine declares environmental rights as a priority, recognizing them as fundamental for ensuring the safety and health of citizens - Article 50. Including environmental rights in the Constitution of Ukraine involves establishing nationwide political, economic, and legal mechanisms to protect and restore violated rights. The definitions of the terms 'guarantee' and 'enforcement' distinguish the conditions and means of realizing environmental rights from the measures for protecting and defending them. Ensuring involves promoting the realization of rights through positive state action, applying legal protection measures and restoring the violated legal status. These rights are constitutionally guaranteed in Articles 3 (primacy of human and civil rights), 21 (inalienability of human rights), 22 (inalienability of rights and freedoms) and 50 (environmental rights), among others, which proclaim their inviolability and inalienability.

According to Article 22 of the Constitution, the highest legal force is given to the principles that ensure equality and the inadmissibility of the restriction of rights, as well as other general guarantees ("The rights and freedoms of man and citizen are inalienable and inviolable. The content and scope of existing rights and freedoms may not be narrowed".

However, the practical implementation of environmental rights in Ukraine is hindered by significant challenges and gaps. The main problems are insufficient legislative regulation and the lack of effective mechanisms to ensure these rights. Although the Ukrainian Constitution enshrines fundamental environmental rights, there is, in practice, no coherent or effective regulatory or legal mechanism for their implementation. Existing legislation is fragmented and inconsistent and contains gaps that complicate control and prosecution for violations of environmental norms.

So, for example, the Law of Ukraine "On Environmental Protection"[121]: establishes the general principles of environmental policy and the rights and obligations of citizens and authorities, currently has several significant shortcomings. The law's provisions are formulated quite generally; it does not address modern challenges such as global climate change and the use of new technologies in industry, doesn't consider innovative methods of environmental monitoring; lacks effective accountability mechanisms for environmental norm violations. This reduces its adaptability and effectiveness in modern conditions. Furthermore, issues regarding public participation in decision-making processes related to environmental protection remain unresolved, thereby depriving the population of the opportunity to effectively oversee the activities

[121]Verkhovna Rada of Ukraine. The Law of Ukraine "On Environmental Protection", No.1264-XII, Version 15.11.2024, URL: https://zakon.rada.gov.ua/laws/show/1264-12?lang=en#Text, Accessed date: 21.06.2025

of enterprises and government bodies.

The Law 'On Environmental Impact Assessment'[122] establishes a procedure for assessing the environmental impact of planned economic or other activities, with the aim of preventing or minimizing negative consequences. But there are a lot of lacks inside this law: insufficient public participation: the public's the right of the participation in the EIA procedure isn't fully implemented; absence of the clear procedure for providing the public with timely and complete information about planned projects and the stages of the EIA process; absence of the effective mechanisms for considering public comments; limited transparency of procedures.

The Law 'On Waste'[123] establishes the legal, economic and organizational framework for waste management, including its collection, utilization, processing and disposal. However, the implementation of the law's provisions in practice faces significant challenges. There is a lack of inspectors, inadequate logistical support, a lack of strict sanctions for violations of the law.

The structure of the executive branch in the field of ecology is paradoxical. For example, the Ministry of Energy and Environmental Protection[124] is responsible for developing and implementing environmental policy, while also overseeing industries that are traditionally the main sources of environmental pollution, such as energy resource extraction and use. In my opinion, this creates a conflict of interest that significantly weakens the effectiveness of environmental control and the protection of citizens' rights to a safe environment.

The absence of a comprehensive, consolidated law on environmental protection, such as an Environmental Code, leads to a dispersion of powers and a decrease in responsibility at all levels of government. Various legislative acts are often inconsistent with each other, which complicates the enforcement and protection of environmental rights.

Thus, although environmental rights are enshrined as fundamental in modern Ukrainian constitutionalism (Articles 3 and 22 of the Constitution), they remain mostly declarative without effective instruments to guarantee them. To truly ensure these rights, a systemic approach is needed which involves updating and unifying legislation, reforming public administration in the environmental sphere and strengthening the public's role in control. It also involves creating transparent and accessible mechanisms for judicial protection. Otherwise, the threat to every citizen's right to life and health in a safe environment will remain significant, and the concept of sustainable development will remain merely declarative.

[122]Verkhovna Rada of Ukraine. The Law 'On Environmental Impact Assessment', No. 2059-VIII, Version 15.11.2024, URL: https://zakon.rada.gov.ua/laws/show/2059-19?lang=en#Text, Accessed date: 21.06.2025

[123]Verkhovna Rada of Ukraine. The Law 'On Waste', No. 2320-IX, Version 15.11.2024, URL: https://zakon.rada.gov.ua/laws/show/2320-20?lang=en#Text, Accessed date: 21.06.2025

[124]The Ministry of Energy and Environmental Protection of Ukraine, official website, URL: https://mepr.gov.ua/, Accessed date: 21.06.2025

Regarding ecological constitutionalism, an interesting point of view is presented in the Global Judicial Handbook on Environmental Constitutionalism[125]. Ecological constitutionalism involves incorporating environmental protection and sustainable development into the foundation of a state's legal system at a constitutional level. It is based on the recognition of the right to a healthy environment as a fundamental human right that should have the same legal force as the right to life, liberty, dignity, or health.

As the Colombian Constitutional Court points out, 'environmental degradation and gradual destruction can alter the conditions that enabled human development, resulting in a decline in our quality of life and that of our descendants, and potentially leading to the extinction of the human species' (Colombian Constitutional Court, 2010, p.32). The right to a favorable environment enshrined in the Constitution should be considered a fundamental right, carrying significant legal weight and being self-executing, clearly formulated as an absolute right, rather than a declaration, so that they do not require additional legislative implementation — that is, they should be independently applicable (enforceable). This means that no additional legislative act is required for the right to be implemented, and courts can properly consider complaints and make decisions that protect environmental interests. Within the framework of environmental constitutionalism, environmental rights are considered self-executing. This means that they do not require specific legislation to come into force and can be protected directly in court. As the UNEP Handbook notes, constitutional provisions that explicitly refer to a 'right' and are contained in sections on fundamental rights (e.g. the 'Bill of Rights') are more likely to be recognized by courts as enforceable without additional parliamentary legislation. In my opinion, this is the most effective approach, given the constitution's direct effect.

As I noted above, the Constitution of Ukraine defines environmental rights in Article 50 today: 'Everyone has the right to a safe environment for life and health, and to compensation for damage caused by the violation of this right.' While this is a progressive formulation, it is not self-fulfilling in the practice of law enforcement. Courts rarely consider claims based solely on Article 50 of the Constitution, often requiring a special law or regulatory framework, that also have disadvantages and are not balanced between each other and with the Constitution (e.g. the Environmental Protection Law, the Environmental Impact Assessment Law, etc.). Furthermore, Ukraine lacks a clear concept of broad locus standi (the right to appeal to a third-party court), which would enable claims to be filed to protect the environment in the public interest, even if the

[125]United Nations. May James R., Daly Erin, Widener University Delaware Law School, United Nations Environment Program, Global Judicial Handbook on Environmental Constitutionalism, Third Edition, 2019, p.7,32, URL: https://unece.org/fileadmin/DAM/env/pp/a.to.j/JEN/2019_JEN/UNEP_Handbook_on_Environmental_Constitutionalism 3d_ed.pdf, Accessed date: 21.06.2025

plaintiff is not directly affected.

For example, in the case of "Dubetska and Others v. Ukraine" (2008)[126], the European Court of Human Rights found that the Ukrainian state violated the rights of villagers living near a mine due to non-compliance with environmental standards. The court referred not to Article 50 of the Constitution of Ukraine, but to Article 8 of the European Convention on Human Rights - on the right to respect for private and family life. This indicates the insufficient effectiveness of the current version of the constitutional norm and its limited practical applicability.

Article 50 of the Constitution of Ukraine enshrines the right to a safe environment, but its status as a fundamental right is unclear, which complicates its judicial implementation. It would therefore be advisable to introduce a direct norm into the Fundamental Law of Ukraine: 'Everyone has the right to a healthy environment, which is fundamental and self-fulfilling, and is subject to direct judicial protection.' This will be according to the modern international legal trends, particularly UN General Assembly Resolution No. 76/300 (2022)[127]-in particular to the right to a clean, healthy and sustainable environment as a universal human right.

In the interests of the environment, it is also important to guarantee a broad right to appeal to the court (locus standi). Currently, Ukraine's procedural mechanisms for protecting environmental rights are limited. Only individuals who can prove a personal right has been violated have locus standi. In ecology, however, this approach is outdated since environmental damage is diffuse in nature — it often affects a community, a region or even future generations rather than a single individual. It is important to establish the principles of sustainable development at the constitutional level. We will consider this principle in more detail in the next subchapter (in 3.2 of this paper).

It is also important to introduce constitutional obligations for both the state and its citizens to protect nature. Modern constitutions recognize the human right to an ecologically safe environment and the state's and citizens' obligation to protect nature. Such provisions help to establish environmental responsibility as a social imperative. For instance, Ecuador's constitution recognizes nature as a legal entity with the right "to exist, restore and preserve its life system" (Article 71-74)[128]. This radical innovation sets a precedent for the future development of environmental protection. In my opinion, Ukraine should introduce a similar norm: 'The state, local governments, citizens and legal entities are obliged to protect the environment, maintain its

[126]ECtHR, HUDOC, The case of "Dubetska and Others v. Ukraine", No. 30499/03), 2008, URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-103273%22]}, Accessed date: 21.06.2025

[127]United Nations, UN General Assembly Resolution No. 76/300, 2022, URL: https://www.un.org/en/ga/76/resolutions.shtml; https://docs.un.org/en/A/RES/76/300, Accessed date: 21.06.2025

[128]Parliament of Ecuador, The Constitution of Ecuador, Articles 71-74, URL: https://www.constituteproject.org/constitution/Ecuador_2021, Accessed date: 21.06.2025

ecological balance, reduce the negative impact on the climate, and preserve biodiversity'.

The next important step is to align the current regulatory framework with the updated constitution, as I emphasized above. After amending the Ukrainian Constitution, it will be necessary to harmonize all related laws, particularly the Ukrainians Laws on Environmental Protection and Environmental Expertise, the Ukrainian Land, Water and Forest Codes, the Law On Waste, the Ukrainian Criminal and Administrative Codes with regard to environmental liability, and the Ukrainian Code of Administrative Procedure with regard to procedures of public interest. The Ukrainian Law on Access to Public Information should also be updated to include environmental information.

It is crucial to ensure the active participation of citizens in the development of environmental policy. To this end, it would be advisable to create the following mechanisms: preliminary public discussion of all projects that affect the environment obligation, to take the environmental community's conclusions into account, environmental education, functioning institutions of public environmental observers.

The environmental transformation of the Constitution of Ukraine should be based on recognizing the environment as a vital resource and on the principles of justice, sustainability and human dignity. Implementing such changes would ensure a transition to a new model of legal regulation, in which nature is recognized as more than just a resource and is instead considered a shared heritage that deserves full legal protection.

Such reform would align Ukraine with European Union standards, particularly the European Green Deal, and strengthen our legal status as a state that guarantees environmental security and a decent life in a sustainable world.

3.2 EU Green Deal: Integrating sustainable development principles into fundamental norms

UN General Assembly approved 17 Sustainable Development Goals (SDGs) in 2015[129], that became a universal agenda for all countries and formed the basis of national sustainable development strategies, including also Ukraine. UN General Assembly approved 17 Sustainable Development Goals (SDGs) in 2015[130], that became a universal agenda for all countries and formed the basis of national sustainable development strategies, including also Ukraine. EU established the European Green Deal: a strategic initiative aimed at transforming the European

[129]United Nations, the 17 Sustainable Development Goals (SDGs), 2015, URL: https://sdgs.un.org/goals, Accessed date: 21.06.2025
[130]European Council, The European Green Deal (EU Green Deal), 2019, URL: https://www.consilium.europa.eu/en/policies/european-green-deal/#:~:text=The%20European%20Green%20Deal%20is%20the%20EU%E2%80%99s%20growth,ultimate%20goal%20of%20reaching%20climate%20neutrality%20by%202050, Accessed date: 21.06.2025

Union into a climate-neutral economy by 2050. There are three pillars of sustainable development: ecology, the economy, and social justice. These three pillars form a holistic approach, with each element depending on the others.

The UN SDGs and the European Green Deal are essentially and in terms of their goals deeply interconnected initiatives. The EU's Green Deal can be considered a mechanism for implementing the SDGs.

For Ukraine, a state that has declared its commitment to European integration, adapting to these principles is not only a political choice, but also a legal obligation under the terms of the Association Agreement with the EU. Decree of the President of Ukraine No. 722/2019 dated

September 30, 2019, entitled "On the Goals of the Sustainable Development of Ukraine for the Period Until 2030"[131], was adopted in 2019 and is currently in effect. It supports the global goals of sustainable development, proclaimed by the UN General Assembly in 2015, and adapts them to the national conditions of Ukraine. In 2021 officially supported the goals of the European Green Course. At the 23rd Ukraine-European Union Summit in October 2021[132], a joint statement was made confirming Ukraine's intention to align its legislation with the provisions of the European Green Deal. This document officially confirmed political commitment at the highest level.

In 2023, the Verkhovna Rada of Ukraine also adopted several laws aimed at implementing key elements of the European Green Deal, including in particular the Law No. 3220-IX- the Law of Ukraine on Amending Certain Laws of Ukraine on the Restoration and 'Green' Transformation of the Energy System of Ukraine[133], and the Law No. 2955-IX, the Law of Ukraine on Amending the Law of Ukraine 'On Combined Heat and Power Generation (Cogeneration) and Use of Waste Energy Potential' on the Development of Highly Efficient Cogeneration[134].

Despite Ukraine taking the first steps to implement certain provisions of the European Green Deal, the scale of these measures is insufficient for the country to make a systematic and complex transition to sustainable development, particularly about Ukraine's fundamental

[131]Verkhovna Rada of Ukraine. The Decree of the President of Ukraine No. 722/2019 dated September 30, 2019," On the Goals of the Sustainable Development of Ukraine for the Period Until 2030, URL: https://zakon.rada.gov.ua/laws/show/722/2019?lang=en#Text, Accessed date: 21.06.2025

[132]President of Ukraine. Official website of Zelenskiy, Ihor Zhovkva, 12.10.2021, The 23rd Ukraine-EU Summit became one of the most successful in the entire history of our country's relations with the European Union, URL: https://www.president.gov.ua/en/news/igor-zhovkva-23-j-samit-ukrayina-yes-buv-odnim-iz-najuspishn-71053, Accessed date: 21.06.2025

[133]Verkhovna Rada of Ukraine, Law of Ukraine on Amending Certain Laws of Ukraine on the Restoration and 'Green' Transformation of the Energy System of Ukraine, No. 3220-IX, Version 30.06.2024, URL: https://zakon.rada.gov.ua/laws/show/3220-IX?lang=en, Accessed date: 21.06.2025

[134]Verkhovna Rada of Ukraine, Law of Ukraine on Amending the Law of Ukraine 'On Combined Heat and Power Generation (Cogeneration) and Use of Waste Energy Potential' on the Development of Highly Efficient Cogeneration, No. 2955-IX, URL: https://zakon.rada.gov.ua/laws/show/2955-20?lang=en#Text, Accessed date: 21.06.2025

restoration principle «Build it better»[135].

Sustainable development is one of the country's fundamental recovery principles, enshrined in the Lugano Declaration[136] (URC2022 final document), signed by Ukraine's key partners and allies. The declaration sets out a vision for recovery that aligns with the objectives of the Paris Climate Agreement and the 2030 Agenda for Sustainable Development, EU Green deal.

In this context, E-democracy DREAMS (Digital Restoration Ecosystem for Accountable Management and Sustainability), a digital platform and key instrument of transparency, is particularly important. The DREAMS platform provides open access to real-time data on all stages of Ukraine's reconstruction projects. The state DREAM recovery management system has been designed to serve as a 'single window' for local self-government bodies working on recovery projects. This enables citizens, experts, business representatives and government bodies to monitor progress, evaluate effectiveness, minimize risks and ensure accurate reporting. The mandatory publication of all projects on the DREAMS platform offers hope and provides a means of forming a sustainable ecosystem that integrates the economic, social and ecological aspects of recovery.

Within the framework of this initiative, the main principles of sustainable restoration are being implemented. The first of these is an ecological approach: a working group on the sustainable design of buildings has been created and is headed by the public organization ReThink. This group is working on adapting key international standards and certification systems to the Ukrainian context. The aim is to develop basic guidelines for sustainable development that consider the principles of the circular economy, ecological design, and sustainable urbanism, as well as the use of ecological materials and energy-efficient solutions.

All reconstruction and new construction projects must comply with Ukraine's current construction standards, including energy efficiency requirements. Ukraine is actively adopting European construction standards for buildings with minimal energy consumption and is striving for the full decarbonization of its buildings by 2050. Inclusively, the New European Bauhaus (NEB)[137] also integrated into DREAMS. The International Institute of Sustainable Development (IISD) analyses the international sustainable development framework, focusing on infrastructure restoration and construction. The Ministry of Development of Communities, Territories and Infrastructure of Ukraine's Regional Development Agency facilitates the exchange and replication

[135]Dream Ecosystem, official website of the Platform, E-Democracy, URL: https://www.dream.gov.ua/special/sustainabilityrestoration, Accessed date: 21.06.2025

[136]Ukraine Recovery Conference, Lugano Declaration, 04-05.07.2022, URL: https://manifesto.org.ua/eng; https://www.urc-international.com/past-conferences/urc22/conference-materials#:~:text=The%20Lugano%20Declaration%20is%20the%20final%20outcome%20document,Cassis%20and%20is%20endorsed%20by%20the%20participating%20States, Accessed date: 21.06.2025

[137]European Union, The New European Bauhaus (NEB), URL: https://new-european-bauhaus.europa.eu/index_en, Accessed date: 21.06.2025

of best practices by collecting successful cases incorporating sustainable development elements from across the country. These cases will be accessible via the DREAMS platform.

Thus, the DREAMS platform acts as a key mechanism for the transparent, accountable and sustainable management of Ukraine's reconstruction process, considering European and international standards. Integrating the principles of the circular economy, energy efficiency, ecological sustainability and social sustainability will create a solid basis for the country's "green" transition and European integration.

On 16 January 2025, the Verkhovna Rada of Ukraine adopted Law No. 12245, Bill 12245 on Amendments to the Budget Code of Ukraine to Update and Improve Certain Provisions[138], as a whole. For the first time at the level of national legislation, this bill enshrines the use of the DREAM ecosystem — the State Digital Recovery Management Platform — as the core of the Unified Information System for Managing Public Investment Projects. According to the law, the formation of the state's Unified Public Investment Portfolio will be carried out exclusively through this system. DREAM will officially perform the functions of a public investment project bank, and the government will determine the procedure for its functioning, components, powers, and the roles of participants. The law also establishes the basic principles for planning, preparing, selecting and implementing public investment projects at state, regional and local levels. Currently, more than 787 investment projects have been submitted to the ecosystem and assessed for inclusion in the Unified Portfolio. All information about these projects is available for public and international monitoring via the DREAM digital platform.

I would like to note that DREAM was already functioning in practice long before Law No. 12245 was adopted. Between 2023 and 2024, the system was already being actively used by the authorities, local communities and donors as a digital basis for project management to support the country's recovery. However, prior to the law's adoption, its use was not subject to a clearly defined legal obligation, resulting in gaps in regulation. Furthermore, even after the law was adopted, several critical tasks remain. In particular, no amendments have been made to the Constitution of Ukraine to consolidate the established principle of transparent and digital management of public finances, define sustainable development, constitutional guarantees of ecological safety and recovery, based on the circular economy and climate neutrality as strategic state constitutional goals, and guarantee citizens the right to participate in the ecologically sustainable development of the state and its recovery through digital tools, legitimize the mechanisms of digital transparency, accountability and open data in the sphere of public investments, establish the

[138]Verkhovna Rada of Ukraine, Law of Ukraine “On Amendments to the Budget Code of Ukraine to Update and Improve Certain Provisions”, No. 4225-IX, 16.01.2025, URL: https://zakon.rada.gov.ua/laws/show/4225-IX?lang=en#Text, Accessed date: 21.06.2025

principles of green taxonomy. There is also no separate special law 'On the State DREAM Ecosystem', which would define DREAM's status as independent, sustainable and non-profit digital infrastructure of state importance - the unified digital platform for management of recovery, sustainable and public investments; and establish its mandatory use for all budget administrators; unify the standards of planning, sustainability and project evaluation (LCA, ESG, EU taxonomy, carbon credits, NEB, etc.); and create open control and accountability mechanisms; fixes the obligatory placement of all projects receiving state, local or international financing; will introduce the concepts of "ecological taxonomy", "carbon credits", "carbon calculator", "life cycle assessment" and "critical materials" as elements of digital project analytics.

There is a need for the regulation of the digital aspects of sustainability, such as the integration of environmental and social taxonomies into project evaluations, the digital tracking of carbon footprints, resource efficiency and critical materials, and the formation of a legislative framework for circular economies within investment programs. In my opinion, the real introduction of the principles of sustainable development requires the implementation of the above in real life, and this can only be achieved through the full legal implementation of DREAM as the basis of a new state recovery model.

This should be carried out by the government in collaboration with the teams from the Ministry of Community Development, the Ministry of Economy, the Ministry of Finance and the DREAM Project Office. Public investment management reform will only be complete when DREAM receives constitutional recognition as part of the public administration architecture, full regulatory and legal consolidation at law and bylaw level, and stable financing, development and independent monitoring mechanisms. This will enable DREAM to evolve from an IT solution into a new model of interaction between the state, communities, businesses and donors, promoting the sustainable recovery of Ukraine.

3.3 Climate Transformation: New duties of the state towards future generations

In today's world, issues of sustainability and environmental responsibility are becoming increasingly important Prof. Vasco Pereira da Silva[139] raises the important question that ecology, as a community problem and a political issue, is a reality of the modern world. According to this approach, climate change is a resurgence of environmental issues that is becoming increasingly evident within the framework of constitutionalism[140]. According to this approach, climate change is a resurgence of environmental issues that is becoming increasingly evident within the framework

[139]Vasco Pereira da Silva, 'Commentary to a Multilevel Court Decision for a Multilevel Public Law Professor: An Homage to Jacques Ziller', in Diane Fromage (ed.), Jacques Ziller: A European Scholar (European University Institute, 2022), 243- 244
[140]Vasco Pereira da Silva, La Constituzione di oggi e di domani, PasSaggi Constituzionali, ETPbooks, Anno IV-Numero 2-Dicembre 2024, ISBN: 978-618-5752-41-5. pp. 68-69

of constitutionalism. Environmental challenges can no longer be considered purely technical or environmental; they have become a fundamental component of the democratic system, requiring effective institutional solutions and adequate regulation. In this context, the crisis of the welfare state has revealed new perspectives on environmental issues, emphasizing that
Environmental protection is a political as well as an ecological task requiring a comprehensive approach to state policy, constitutional regulation, and interstate cooperation.

In this context, the crisis of the welfare state has opened new horizons for the ecological issue, emphasizing that environmental protection is not only an ecological problem, but also a problem of political solutions. Ukraine, like many other countries, is facing numerous challenges in the field of ecology and climate change that require attention at the level of state policy and international cooperation. Since only an adequate reflection of the new reality in legal norms allows for the effective protection of fundamental rights of the individual.

From this perspective, the growing recognition of ecology as a social and political challenge is increasingly influencing the legal sphere, particularly through judicial intervention. Courts are beginning to play a key role in shaping environmental policy and ensuring that states fulfil their obligations to protect the environment and combat climate change. One of the most striking examples of this trend is the historic decision of the German Federal Constitutional Court in the case of Neubauer et al. v. Germany[141] (judgment issued by the Federal Constitutional Court of Germany (Bundesverfassungsgericht) on March 24, 2021 (published on April 29, 2021), which marked a significant turning point in the relationship between constitutional rights and climate protection.

In February 2020, a group of German youths challenged the German Federal Climate Protection Act ("Bundesklimaschutzgesetz"[142] or "KSG") before the Federal Constitutional Court, arguing that the KSG's target of a 55% reduction in greenhouse gas emissions by 2030 compared to 1990 levels was insufficient. The complainants argued that the KSG thus violated their human rights protected by the Basic Law, the Constitution of the Federal Republic of Germany[143]. The complainants argued that the KSG's 2030 target did not consider Germany's and the EU's obligations under the Paris Agreement (2(1)(a)) and German Constitution (in particular: Article 2(1) GG, Article 2(2) GG, Article 20a GG) to limit the global temperature increase to "well below

[141]Federal Constitutional Court of Germany, The case of Neubauer et al. v. Germany, 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, Decision 29.04.2021, URL: https://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/, Accessed date: 21.06.2025

[142]Bundesamt fur Jüsticy, Bundesklimaschutzgesetz, 12.12.2019, URL: https://www.gesetze-im-internet.de/ksg/BJNR251310019.html, Accessed date: 21.06.2025

[143]Federal Office of Justice, Constitution of the Federal Republic of Germany URL:https://www.gesetze-im-internet.de/gg/BJNR000010949.html, Accessed date: 21.06.2025

2 degrees Celsius[144]". The complainants argued that Germany would need to reduce its Greenhouse gas emissions by 70% by 2030 compared to 1990 levels to "make its contribution" to achieving the goals of the Paris Agreement. Their claims were mainly based on alleged violations of the fundamental right to a future in accordance with human dignity, enshrined in Article 1(1) of the Basic Law, and the fundamental right to life and physical integrity, enshrined in Article 2(2) of the Basic Law, both in conjunction with Article 20a of the Basic Law, which obliges the political process to protect the natural foundations of life in a responsible manner for future generations. The complainants argued that by requiring insufficient short- and medium-term reductions in greenhouse gas emissions and by allowing the transfer of emission allocations between Germany and other EU member states despite the inadequacy of the EU's overall emission reduction target, the KSG had allowed climate impacts that violated their fundamental rights. They asked the Federal Constitutional Court to declare that the German legislature had violated the Basic Law by requiring only a 55% reduction in greenhouse gas emissions from 1990 levels by 2030, and that the legislature was obliged to issue new reduction quotas to ensure that emissions in Germany remained as low as possible, taking into account the principle of proportionality.

On 29 April 2021, the German Federal Constitutional Court ruled that the KSG did not contain sufficient provisions for reducing greenhouse gas emissions after 2030, which was incompatible with the country's Basic Law. In particular, the court ruled that the lack of specific targets and measures for the period after 2030 violates fundamental rights because it shifts an excessive burden of reducing emissions onto future generations.

The court also found that Article 20a of the Basic Law not only obliges the legislature to protect the climate and strive for climate neutrality, but also "concerns how the environmental burden is shared between different generations". For the first time in its case law, the Court held that "fundamental rights - as intertemporal guarantees of freedom - provide protection against the burden of reducing greenhouse gas emissions imposed by Article 20a of the Basic Law, which is unilaterally shifted into the future". The Court also found that the disputed emissions provisions of the KSG had an "effect similar to a priori intervention", which could have violated the complainants' fundamental rights, and thus rendered the complaints admissible.

Accepting the arguments that the legislature should have followed a carbon budget approach in order to limit warming to well below 2°C and, if possible, to 1.5°C, the Court found that the legislature had not distributed the budget disproportionately between present and future generations, writing that "one generation cannot be allowed to consume a significant part of the

[144]UN, Paris Agreement, 2015, URL: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed date: 21.06.2025

CO2 budget while bearing a relatively small share of the reduction effort, if this would mean leaving subsequent generations with a heavy burden of reduction and exposing their lives to serious losses of freedom". The Court also stated that "the fact that no State can solve the problems of climate change on its own (...) does not negate the national obligation to take measures to combat climate change". This decision had not only specific legal consequences, but also broader legal and political implications. In particular, the decision led to an immediate revision of the Federal Climate Protection Act. The court ordered the legislature to set clear reduction targets for the period from 2031 to the end of 2022. In response to this decision, the federal legislature passed the First Amendment to the Federal Climate Protection Act, which approves an adapted Climate Protection Act[145] requiring a reduction in greenhouse gas emissions of at least 65% by 2030 compared to 1990 levels. It means that the updated KSG now requires a reduction of at least 65% by 2030 and sets a climate neutrality target by 2045, reflecting a more balanced carbon budget.

In this context, it is important to note the commentary by Prof. Vasco Pereira da Silva[146], who described this decision as a highly innovative decision in the field of constitutional and environmental law, it addresses five key aspects that reflect a paradigm shift in the legal approach to environmental issues. First, the decision positions climate change not only as a domestic policy issue, but also as a "global constitutional environmental law issue", emphasizing that both national and international legal frameworks must be consistent to ensure effective environmental protection. Second, it reaffirms the principle that "human rights and fundamental rights are of equal importance", thereby recognizing environmental protection as a necessary component for the realization of all other rights. Thirdly, the Court confirms that the German constitution implicitly protects the fundamental right to the environment, thereby integrating environmental concerns into the basis of constitutional interpretation. Fourth, Prof. Vasco Pereira da Silva emphasizes that the ruling introduces the concept of "environmental rights not only as individual rights, but also as active rights of state institutions", thereby ensuring a broader legal position in environmental litigation. Finally, and most importantly, the ruling formulates "the right to the environment as a right of future generations", thereby establishing a prospective constitutional obligation of the state. This intergenerational perspective is a crucial development in constitutional law that Ukraine in particular, as a country undergoing digital and ecological transformation, needs to consider and implement. In this context, the German decision offers a compelling model for countries like

[145]Bundesministerium für Umwelt. Erstes Gesetz zur Änderung des Bundes-Klimaschutzgesetzes, Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 59, ausgegeben am 30.08.2021, Seite 3905, 18.08.2021, URL: https://dejure.org/BGBl/2021/BGBl._I_S._3905, Accessed date: 21.06.2025

[146] Vasco Pereira da Silva, "Commentary on the Decision of the German Constitutional Court on Climate Change (24/03/2021)," in Diane Fromage (ed.), *Jacques Ziller: A European Scholar*, European University Institute, 2022, pp. 244–245.

Ukraine to consider 'constitutional reforms' that clearly enshrine 'environmental rights and responsibilities', thereby strengthening the legal and moral obligations of the state to respond to the climate crisis.

I agree with the Prof. Vasco Pereira da Silva and the authors of the book "Courts, climate litigation and the evolution of earth system law"[147]: "... By focusing on climate governance, we argue that courts, as key actors in the rapidly growing landscape of climate litigation, are already shaping the trajectory of law and governance, moving beyond the narrow confines of national law to a more inclusive legal paradigm focused on the Earth system..."

In the context of consideration of the above information, the issue of adaptation of Ukrainian constitutional norms to modern environmental challenges deserves special attention.

The Constitution of Ukraine already contains specific provisions guaranteeing environmental rights. For example, Article 16 provides: "It shall be the duty of the state to ensure ecological safety and maintain ecological balance on the territory of Ukraine, to overcome the consequences of the Chernobyl disaster - a catastrophe of planetary proportions, and to preserve the gene pool of the Ukrainian people". In addition, Article 50 of the Constitution guarantees: "Everyone has the right to an environment safe for life and health and to compensation for damage caused by violation of this right. Everyone is guaranteed the right to free access to information on the state of the environment, the quality of food and household goods, and the right to disseminate such information." However, these norms are general and do not include specific obligations to achieve climate neutrality or intergenerational equity. They do not integrate environmental rights into the system of fundamental rights in a way that is characteristic of modern European constitutionalism. At the same time, the European Union has a more clearly structured legal system in the field of climate and environment within key international documents: the European Climate Change Act (EU Regulation 2021/1119)[148] - sets a legally binding target to achieve climate neutrality by 2050 and an interim target to reduce emissions by at least 55% by 2030 (compared to 1990 levels); The Charter of Fundamental Rights of the European Union[149], and in particular Article 37 thereof, provides that "a high level of environmental protection and the improvement of its quality shall be integrated into the policies of the Union and shall be ensured in accordance with

[147]Kotzé, Louis J.; Mayer, Benoit; van Asselt, Harro; Setzer, Joana; Biermann, Frank; Celis, Nicolas; Adelman, Sam; Lewis, Bridget; Kennedy, Amanda; Arling, Helen; Peters, Birgit (2024). "Courts, climate litigation and the evolution of earth system law". Global Policy. 15 (1): 5–22. doi:10.1111/1758-5899.13291. ISSN 1758-5880. URL: https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.13291, Accessed date: 21.06.2025

[148]European Union. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law'), Document 32021R1119, URL: http://data.europa.eu/eli/reg/2021/1119/oj, Accessed date: 21.06.2025

[149]European Union. Charter of Fundamental Rights of the European Union, Document 12012P/TXT, URL: http://data.europa.eu/eli/treaty/char_2012/oj, Accessed date: 21.06.2025

the principle of sustainable development"; the Aarhus Convention (1998)[150], ratified by both

Ukraine and the EU, provides for - the right of access to environmental information; - public participation in decision-making affecting the environment; - access to justice in cases of violation of environmental rights; the European Green Deal[151] is a strategic plan for legislative reform to achieve climate neutrality, in particular through the Emissions Trading System (ETS) and the Fit for 55 initiative; the Paris climate agreement (2015)[152], ratified by Law of Ukraine No. 1469-VIII of 14 July 2016, which aims to limit the global average temperature increase to well below 2°C above pre-industrial levels and to pursue efforts to limit the increase to 1.5°C. The Paris Agreement provides a legal basis for Nationally Determined Contributions (NDCs), which participating countries are required to update and improve on a regular basis. Ukraine, as a Party to the Agreement, adopted an updated NDC in 2021, which envisages a 65% reduction of greenhouse gas emissions by 2030 compared to 1990 levels, and declared the achievement of climate neutrality by 2060.

To this end, constitutional amendments should aim not only to affirm environmental values, but also to: introduce binding environmental and climate obligations for the state; specify the law on climate change mitigation and adaptation; implement EU principles such as sustainability, proportionality and precaution in national constitutional law; and ensure compliance with international obligations, including the Paris Agreement and the Aarhus Convention.

In this regard, it is advisable to consider the possibility of introducing the following amendments to the Constitution of Ukraine: establishing the right to a safe environment as a fundamental and inalienable right - a right guaranteed to both present and future generations; defining the state's obligation to ensure climate neutrality, sustainable development and preventive environmental protection; institutionalizing the principle of intergenerational equity in environmental law - in order to prevent excessive burdens on future generations; providing environmental rights with procedural guarantees, in particular the right to access environmental information, participation in environmental decision-making and effective judicial protection. Incorporating the above provisions into the Constitution of Ukraine will not only strengthen the legal basis for environmental protection but will also ensure the harmonization of national legislation with the norms and standards of the European Union, which is crucial in the context of the country's progress towards European integration. It will also help to increase the level of

[150]UNECE. The Aarhus Convention (1998), URL: https://unece.org/environment-policy/public-participation/aarhus-convention/text, Accessed date: 21.06.2025

[151]European Union. The European Green Deal, URL: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en, Accessed date: 21.06.2025

[152]UN Framework Convention on Climate Change, The Paris climate agreement, 2015, URL: https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf, Accessed date: 21.06.2025

accountability of state bodies in the field of environmental policy, as well as to formulate a long-term sustainable development strategy focused on environmental safety, human rights and responsibility towards future generations.

And in this respect, it is important to analyze what are the main practical instruments for achieving the objectives of the KSG. And here I think it is worth mentioning the European Emissions Trading Scheme (ETS). This is the European Union's main legal instrument for combating climate change. It works on the principle of "cap and trade": a general limit is set on the volume of greenhouse gas emissions, and companies are given or buy quotas (permits) for these emissions. Those who reduce their emissions can sell surplus allowances to those who need them. This creates a financial incentive to reduce emissions. The scheme has two main components: ETS1 (Emissions Trading System 1) - launched in 2005, covering large industrial companies and the energy sector. It was the world's first large-scale emissions trading system and became a model for other countries; and ETS2 (Emissions Trading System 2) is a new mechanism that will be approved in 2021 and will extend the scope to buildings and road transport - sectors that were not previously covered by ETS1. The introduction of ETS2 is part of the European Green Deal, which aims to achieve climate neutrality by 2050. The introduction of ETS2 is an important complement to ETS1, as it allows for the regulation of a larger part of the economy, making the emissions trading system more comprehensive. Although the decision analyzed does not refer directly to ETS1 and ETS2, it is the interaction of these two systems that ensures a fair distribution of the environmental burden between different economic sectors and generations. ETS2, as a new mechanism, plays an important role in ensuring a fair distribution of this burden and helps to fill the legal gap identified by the Court - the lack of mechanisms for long-term emission reductions in decentralized sectors.

In the context of Ukraine, it should be noted that the country has already taken the first important steps towards the implementation of carbon market mechanisms, including the development of a national system for monitoring, reporting and verification (MRV) of greenhouse gas emissions, which is a prerequisite for participation in the international carbon credit system. Although Ukraine has previously participated in the carbon market through Joint Implementation (JI) projects under the Kyoto Protocol[153], the modernization of carbon emission regulation still requires improvement and practical development, as well as motivation of economic entities to participate. The Law of Ukraine "On the Principles of Monitoring, Reporting and Verification of Greenhouse Gas Emissions"[154] of 2021 laid the foundation for the implementation of an emissions

[153]UN Framework Convention on Climate Change. The Kyoto Protocol, URL: https://unfccc.int/process-and-meetings/the-kyoto-protocol/history-of-the-kyoto-protocol/text-of-the-kyoto-protocol, Accessed date: 21.06.2025

[154]Verkhovna Rada of Ukraine, The Law of Ukraine "On the Principles of Monitoring, Reporting and Verification of Greenhouse

trading system compatible with EU standards, but a fully functioning domestic emissions trading system has not yet been implemented.

The following inclusion of certain constitutional provisions on climate change commitments: the state's responsibility to reduce greenhouse gas emissions, promoting carbon neutrality and implement in market-based instruments such as emissions trading, can strengthen the legal and institutional framework in the managing carbon emissions direction in Ukraine. Such constitutional amendments will also facilitate integration into the EU carbon market according to the European Green Deal and the Carbon Border Adjustment Mechanism (CBAM)[155], as well as alignment with international commitments under the Paris Agreement.

Conclusions to the 3rd chapter.

The scale of environmental damage caused by military aggression makes it clear that Ukraine's current constitutional framework, while declaring environmental protection a duty of the state, does not provide sufficient mechanisms for its effective implementation. Therefore, the constitution must be updated to strengthen the environmental aspect of national security. Specifically, clear provisions should be introduced that stipulate the state's duty to prevent and respond to ecocide, guarantee environmental justice, and ensure the restoration of ecosystems damaged by war. These changes would align the Fundamental Law of Ukraine with modern international environmental standards, particularly the principles of the EU Green Deal and sustainable development. They would also demonstrate the country's commitment to integrating environmental protection into its fundamental constitutional values.

Climate change, new environmental challenges - all this requires amendments to the current Constitution of Ukraine to recognize the right to a safe environment as an inalienable fundamental right for both current and future generations, as well as to strengthen the state's obligations to reduce greenhouse gas emissions and ensure and implement sustainable development. International and European experience, in particular the precedent decision of the Federal Constitutional Court of Germany in the case of Neubauer and others v. Germany, demonstrates a new legal approach to environmental issues. This approach considers climate policy in the context of fundamental human rights and intergenerational justice.

The digital transformation of state management of sustainable development, as embodied by the DREAM system, is an effective tool for coordinating restoration projects and sustainable investment. However, to realize its potential, the status of DREAM as a stable, independent, non-

Gas Emissions" of 2021 No 377-IX, URL: https://leap.unep.org/en/countries/ua/national-legislation/law-no-377-ix-principles-monitoring-reporting-and-verification, Accessed date: 21.06.2025

[155]European Union. European Green Deal and the Carbon Border Adjustment Mechanism (CBAM),25.03.2025, URL: https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en, Accessed date: 21.06.2025

commercial digital infrastructure of state importance must be constitutionally and legislatively consolidated, and the platform must be used by all budget planners. This would enable project evaluation and planning standards to be unified, considering the principles of sustainable development, and would ensure transparency and accountability in the use of state and international funds.

An important component of climate policy is the introduction of market mechanisms to regulate carbon emissions. These mechanisms are already beginning to develop in Ukraine through the creation of a national monitoring, reporting and verification (MRV) system. Considering integration processes and adaptation to the requirements of the European Union, including the carbon border adjustment mechanism (CBAM), it is crucial to enshrine the state's responsibility for achieving climate neutrality, developing carbon markets, and stimulating the green economy in the Constitution. This will not only contribute to the implementation of Ukraine's national climate obligations, but also to its integration into international and regional systems of environmental regulation.

Thus, a complex update to Ukraine's constitution in the field of environmental law, supplemented by digital transformation and the development of market instruments, will establish a robust legal framework for sustainable development and the implementation of climate policy that considers the interests of both current and future generations.

4. Ukraine and the European Support

4.1. Ukraine Facility: Institutional Interaction and Constitutional Obligations

In response to Russia’s invasion of Ukraine in February 2022, the European Union (EU) and its member states have provided Ukraine with unprecedented financial, military, and humanitarian support. According to the European Commission, Team Europe — comprising the EU and its member states — has allocated approximately €177.5 billion to support Ukraine. This support includes macro-financial assistance, funding through the Ukraine Fund, and humanitarian and military assistance from Member States and the European Peace Facility. It also includes support for Ukrainian refugees in the EU. According to the Kiel Institute, the total amount of Team Europe assistance exceeds that provided by the United States, including military assistance. EU funds are disbursed conditional upon Ukraine implementing the Action Plan, an ambitious package of reforms and investments developed by the Ukrainian government and endorsed by the EU. Additionally, the G7 countries agreed to an additional €45 billion loan, €18.1 billion of which will be financed by the EU. €14 billion has already been transferred to Ukraine. To this end, the Credit Cooperation Facility for Ukraine was established. It uses the proceeds from frozen Russian

sovereign assets in G7 countries to repay loans and pay interest. The European Parliament has repeatedly called for the full confiscation of these assets to force Russia to compensate Ukraine for the damage caused. The European Commission has proposed using the frozen assets for a "reparation loan" to Ukraine. On October 23, 2025, the European Council supported this idea, but no concrete decision was made. The issue is planned to be revisited in the future[156].

This unprecedented financial support provides Ukraine with the necessary resources for recovery and development. However, it also underscores the need for careful planning and supervision. The EU Financial Facility for Ukraine is designed to not only channel significant funds, but also ensure coordination, transparency, and the effective integration of assistance with Ukraine's reform agenda. By combining financial support with the implementation of the Action Plan and broader structural reforms, the Facility aims to maximize the impact of investments, contribute to sustainable recovery, and strengthen Ukraine's economic resilience in line with EU standards and principles.

However, in my view, the new EU Financial Facility for Ukraine (Regulation (EU) 2024/792 — Ukraine Facility) presents opportunities and controversial issues in the context of international assistance. Regarding the financial support, the European Commission concluded that a single medium-term instrument is necessary to combine with the Union's bilateral assistance to Ukraine, ensuring coordination and efficiency[157].

The proposal for a regulation of the European Parliament and the Council to establish the Ukraine Facility offers new perspectives on the financial issue. In light of the devastating consequences of Russia's war on the Ukrainian people, economy, and infrastructure, as well as the enormous scale and complexity of the recovery and reconstruction challenge, the European Commission is proposing the creation of a special financial instrument, the "Facility for Ukraine," to provide Ukraine with consistent, predictable, and flexible support from 2024 to 2027. This support is tailored to the unique challenges of aiding a country at war. This proposal acknowledges the risk of a prolonged conflict and the necessity of ongoing macro-financial assistance. The Facility should be flexible, enabling the Union to address Ukraine's needs through various instruments, including financing the Ukrainian state, supporting short-term recovery and reconstruction priorities and facilitating investment and access to finance. It should also provide technical assistance, capacity building, and other relevant activities.

Ursula von der Leyen, President of the European Commission, said: "Ukraine is bravely

[156]European Parliament, State of play: EU support to Ukraine, briefing 07-11-2025, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2025)775834 Accessed date: 24.11.2025

[157]Regulation - EU - 2024/792 - EN - EUR-Lex (europa.eu), https://eur-lex.europa.eu/eli/reg/2024/792/oj,https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32024R0792 , Accessed date: 24.11.2025

fighting the Russian invasion and needs our stable financial support to cover the enormous costs. The EU promised to support Ukraine for as long as it takes, and we are keeping our word. Today, we are proposing to provide up to €50 billion between 2024 and 2027 to help Ukraine resist aggression and rebuild as a modern, prosperous country." Ukrainians are determined to join Europe. Our Union supports this brave nation in its efforts"[158].

The aim of this mechanism is to support the transition to a green, digital, and inclusive economy that is progressively aligned with EU rules and standards.

According to Regulation (EU) 2024/792, Chapter 1, "General Provisions," Article 1, "Subject Matter," the Facility is organized around three pillars:

1. **Pillar I:** Government financial support in the form of grants and loans.
2. **Pillar II:** An investment framework for Ukraine designed to attract private and public investment in Ukraine's recovery and reconstruction and support the implementation of the Plan.
3. **Pillar III:** Technical assistance and other support measures, including mobilizing reform expertise, supporting municipalities and civil society, and providing other forms of bilateral assistance previously available to candidate countries under the Instrument for Pre-Accession Assistance (IPA). This pillar will also support the objectives of the Ukraine Plan. Pillar III will also cover interest rate subsidies on loans granted to Ukraine under Pillar I.

This mechanism is like Next Generation EU due to its framework structure around the national plan and its implementation[159];

The Facility shall be financed by:

1) loans guaranteed above the ceilings of the Multiannual Financial Framework (MFF);
2) A new special instrument, the Ukraine Reserve, will be created as part of the amendment of Council Regulation (EU, Euratom) 2020/2093. This instrument will operate above the MFF ceilings.[160].

This reserve can support expenditures other than loans, including non-repayable assistance, grants, and the provision of guarantees. The amendment to the MFF Regulation stipulates that the Ukraine Reserve should aim for an annual indicative amount of 2.5 billion at current prices. The European Parliament and the Council may mobilize the Ukraine Reserve during the budgetary

[158]Keynote speech by President von der Leyen at the Ukraine Recovery conference 2023. News Article. 21.06.2023. European Neighborhood Policy and Enlargement Negotiations (DR Near). https://neighbourhood-enlargement.ec.europa.eu/news/keynote-speech-president-von-der-leyen-ukraine-recovery-conference-2023-2023-06-21_en, Accessed date: 24.11.2025

[159]Next Generation EU, https://commission.europa.eu/strategy-and-policy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en, Accessed date: 24.11.2025

[160]COM (2023)337 final, Proposal for a COUNCIL REGULATION amending Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027, COM/2023/337 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0337, Accessed date: 24.11.2025

procedure foreseen in Article 314 of the Treaty on the Functioning of the European Union (TFEU). Mobilization of the Ukraine Reserve should provide an annual indicative amount of assistance other than loans, in accordance with proposed Article 10b of the amendment to Council Regulation (EU, Euratom) 2020/2093.

To ensure the efficient implementation of the Facility and the facilitation of Ukraine's European value chains, all supplies and materials financed and procured under this Facility should originate from Member States.

This mechanism will replace the assistance currently provided to Ukraine under the Macro-Financial Assistance Plus (MFA+) program. The plan for Ukraine, prepared under the first component of the Fund, will include conditions based on requirements that were also part of the MFA+ framework. These requirements include macro-financial stability, fiscal surveillance, and public financial management. However, the Ukrainian plan is novel in that it links the allocation of funds to the implementation of sectoral and structural reforms and investments. This provides a coherent medium-term vision of the expected recovery, reconstruction, and modernization measures closely linked to the EU accession process. Like MFA+, the loan component of the assistance will be guaranteed by the EU budget reserve.

Given the uncertainty, the Regulation will allow Ukraine to submit a reasoned request to the Commission to amend or replace the plan for Ukraine. This will be done in cases where, due to objective circumstances, the previously established conditions cannot be fully or partially met by Ukraine.

The possibility of exceptional financing is provided for in duly substantiated exceptional circumstances, in the event of a significant deterioration of the state of war, which makes it impossible for Ukraine to meet the conditions under the mechanism.

The mechanism is open to other donors (e.g. Member States, partner countries, international organizations) and should encourage cooperation and synergy with like-minded partners.

A study of this document also reveals certain controversial points. For example, in the first pillar and in Chapter II (78% irreversible aid) of the mechanism it is stated that financial assistance will be provided in the form of both grant and loan assistance. However, further on, in paragraphs 74-77, it is clearly stated that financial support for Ukraine's plan should be possible only in the form of a loan, which is expected to improve the liquidity of Union bonds and the attractiveness and attractiveness and cost-effectiveness of Union issuance. The EU Commission proposes to provide loans to Ukraine on highly concessional terms with a maximum term of 35 years and to start repayment of the principal only in 2034. And for me, as a scientist and a Ukrainian who longs

to return home, from this point of view it is a controversial issue that urgently needs to be studied - how the loans taken (in particular, making specific calculations) will affect the social and economic condition of Ukraine, its foreign debt. Will Ukraine be able to withstand such conditions of support from the EU, and will Ukraine's acceptance of loans and corresponding obligations regarding the interest rate lead to the complete default of the country and the decline of the economy in Ukraine?

For the macro-financial assistance received by Ukraine on preferential terms from the EU to really help Ukraine ensure its sustainable economic development, it is necessary to implement effective regulation and spending of these funds. First, as I have already noted, it is necessary to unify the borrowed debt with a parallel unification of existing plans for the restoration of Ukraine. It is also important to develop a clear plan of action and identify priorities for the economic sector for recovery, while developing a strategy for the use of borrowed funds. Its content includes the following elements:

1) Smart planning and contracting: Contracting projects that have a high potential for real economic benefit to the country, such as infrastructure development, increased competitiveness, and human capital development through education and health.
2) Transparency and accountability: Ensure transparent use of funds and effective monitoring of expenditures to prevent corruption and wasteful spending.
3) Developing stakeholder dialog: Involving the public, businesses, and other stakeholders in the decision-making process on the use of financial resources to ensure that projects meet the real needs of society.
4) Invest in human capital development: Financing education, training and health can increase the productivity and competitiveness of the workforce, which in turn contributes to economic growth.
5) Supporting innovation and entrepreneurship: Supporting the development of innovative sectors, start-ups and small businesses can stimulate economic development and provide new sources of income for the country.
6) Strategic infrastructure projects: Investing in key infrastructure projects such as transportation networks, energy and communications will contribute to economic growth and attract new investment.

Also, a feature that, in my opinion, hides additional risks in receiving financial assistance from the EU for Ukraine is the provision in paragraph 76 of this document only for the possibility of the central government of Ukraine to request an interest subsidy and exemption from administrative costs each year, and not the provision of such a right for Ukraine.

The paragraph 83 of the document, which provides for support under the Ukrainian

investment program in indirect management and the creation of a Ukrainian guarantee without a defined and clear list of objects that will guarantee investment risks, to me remains rather vague, which can lead to irreversible consequences for Ukraine and the loss of independence as such.

After studying this document, I consider it necessary to mention the risk of possible burdensome bureaucracy and additional costs for Ukraine in this connection (for example, administrative costs), given the lack of similar experience in Ukraine. In my opinion, bureaucratic simplicity is very important for the successful implementation of any plan, especially when it comes to Ukraine and its recovery and urgent needs. The implementation Facility should be as simple as possible and easy to audit and control, ensuring the necessary transparency.

In my opinion, the fact that the plan does not provide for a special distribution of funds by areas of use is ambiguous - this will be determined by the standard budget approval procedure, which in turn may lead to certain corrupt schemes for the use of these funds or the chaotic use of funds without an integrated approach and prioritization in the recovery of economic sectors.

Another challenge is the question of the disproportion of the proposed amount of €50 billion to the estimated cost of Ukraine's reconstruction, which will amount to $411 billion as of early 2023. The EU Ukraine Facility program creates a significant financial base of €50 billion, but the cost of full state restoration significantly exceeds this initial fund. And in the proposed EU document there is no information on how to solve the problem of the discrepancy in the amount of funds in practice, which may lead to unexpected challenges for Ukraine, taking into account the fact that the war is ongoing, possible changes in the exchange rate and the probability
of inefficient use of these funds in the amount of 50 billion euros ... because of the focus on this number and not prioritizing the needs and sectors of the economy for the sake of reconstruction.

According to the Chapter 2 of the Regulation - EU - 2024/792, “Financing and implementation”, Article 6 “Budget”, the resources for the implementation of the Facility shall be available through the Ukraine Reserve to be mobilized in the framework of the annual budgetary procedure in accordance with Article 10b of Regulation (EU, Euratom) 2020/2093, with the following indicative distribution:

(a) 31 % in the form of non-repayable financial support pursuant to Chapter III – Pillar I Ukraine Plan – this section provides funds for the development of investments, but the amount is not specified – paragraph d tells us the following: “…develop investments, that shall be measurable and to be implemented by December 2027”;

(b) 41 % for expenditure pursuant to Chapter IV -Pillar II: Ukraine Investment Framework this section provides funds for the development of the investment framework, but the amount is not specified;

(c) 26 % for expenditure pursuant to Chapter V- Pillar III: Union Accession Assistance and related support measures;

(d) 2 % for expenditure pursuant to paragraph 5 – support the Ukrainian army, which may be increased in exceptional circumstances but shall not in any event exceed 2.5 %.

It is certainly important to pay attention to the multiplier of foreign investments, which, with the development of Ukraine's investment climate, will be able to provide Ukraine with new funds for debt recovery and repayment. However, it is not possible to determine the exact amount of funds from these 50 billion, intended for investment development and investment decision-making. Therefore, it is impossible to make an approximate forecast of the impact of this EU aid to Ukraine on the improvement of its economic condition and the financial possibility of repaying the country's debts.

As can be seen, effectively implementing this Facility depends not only on financial planning, but also on having a sound legal and institutional framework in Ukraine. Specifically, the governance, transparency, and accountability conditions of this financial support intersect with constitutional obligations related to the rule of law, public administration, and national security. The following section examines this connection, particularly between the Ukraine Facility and Ukraine's constitutional principles of public administration.

First, it should be noted that Ukraine directly participated in the preparation of the Ukraine Facility, represented by the Cabinet of Ministers of Ukraine, under the coordination of the Ministry of Economy[161].

On March 18, 2024, the Ukraine Facility Plan was approved by Ukraine, including by the Cabinet of Ministers of Ukraine. On March 20, 2024, former Prime Minister Denys Shmyhal handed over the Plan to European Commission President Ursula von der Leyen, who some time before noted: “Europe is true to its word. We will continue to provide such necessary financing and provide predictability to our courageous partner and candidate for membership. We plan to start disbursements in March[162]”. In order to implement fruitful work and implement a nationwide approach to the preparation of the Ukraine Facility Plan, an Interdepartmental Working Group was established by Resolution of the Cabinet of Ministers of Ukraine No. 737 of July 14, 2023 to prepare an action plan within the framework of the implementation of the European Commission's proposal for a Regulation of the European Parliament and the Council of the European Union on

[161]UA, Cabinet of Ministries of Ukraine, Economic Support Program, Plan for the implementation Ukraine Facility 2024 – 2027, 2024, https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf, Accessed date: 24.11.2025

[162]Forbes Ukraine Electronic Magazine “EU to start payments to Ukraine under €50 billion program from March – European Commission President”, 06.02.2024, URL: https://forbes.ua/news/es-rozpochne-viplati-ukraini-za-programoyu-na-50-mlrd-z-bereznya-golova-evrokomisii-06022024-19005, Accessed date: 24.11.2025

the establishment of the Ukraine Facility[163].

The Ukraine Facility Plan provides for a set of reforms structured into three main blocks[164]: basic reforms, economic reforms, and key development sectors. Special emphasis is placed on cross-sectoral areas that are integrated into all sections of the Plan — green transition, digital transformation, and European integration. Basic reforms are aimed at strengthening the institutional capacity of the state and creating conditions for sustainable economic growth and include the following areas: Public administration reform — forming a professional, depoliticized, and non-corrupt civil service. Public finance management — reducing public debt, reducing the budget deficit, increasing the transparency of the financial system. Judicial reform — fair selection of judges, digitalization of the judicial system, strengthening investor confidence. Combating corruption and money laundering — increasing budget revenues, ensuring effective implementation of the Anti-Corruption Strategy and fulfilling FATF requirements. It is important to note that currently in Ukraine there is a system of anti-corruption bodies: 1) The National Anti-Corruption Bureau is engaged in independent investigation of corruption crimes in the high echelons of power; 2) The Specialized Anti-Corruption Prosecutor's Office is responsible for supervising compliance with the laws during the operational and investigative activities of the pre-trial investigation by the National Anti-Corruption Bureau; 3) The National Agency for the Prevention of Corruption ensures the formation and implementation of the state anti-corruption policy; 4) The High Anti-Corruption Court considers cases of corruption offenses and makes fair decisions. These bodies cooperate with each other and with other agencies to effectively combat corruption and ensure the rule of law in the country.

The second type of reform is economic reforms, the purpose of which is to create a competitive environment for investment and the development of small and medium-sized businesses: Financial markets - facilitating access to credit and increasing investment confidence. State asset management - reducing the burden on the budget and increasing the efficiency of property management. Human capital - developing education, culture, innovation, creating quality working conditions and improving the demographic situation. Business environment - improving the regulatory climate and attracting investment. Decentralization and regional policy - increasing the capacity of regions, transparency of local authorities and balanced territorial development.

The third type of reforms according to the Plan are key sectors (sectoral development). This

[163] Resolution of the Cabinet of Ministers of Ukraine "On the establishment of an Interdepartmental Working Group on the preparation of an action plan within the framework of the implementation of the European Commission proposal for a Regulation of the European Parliament and of the Council of the European Union on the establishment of the Ukrainian Fund" Composition of the collegial body, Regulation dated 14.07.2023 No. 737; Appendix to the Resolution of the CMU dated 14.07.2023 No. 737 URL: https://zakon.rada.gov.ua/laws/show/737-2023-п#Text, Accessed date: 24.11.2025

[164]Tikhonova D.S., State Development Strategy within the framework of the Ukrainian Facility Plan, Legal scientific electronic journal , 9/2024, pp. 270-272, DOI https://doi.org/10.32782/2524-0374/2024-9/63, Accessed date: 24.11.2025

block of reforms is aimed at supporting areas important for rapid economic growth: Energy - strengthening energy security, developing sustainable heat supply. Transport - modernizing infrastructure and integrating with European logistics networks. Agri-food sector - supporting agricultural production, unifying regulations with EU standards, increasing exports. Critical materials and raw materials — development of the sector, attraction of investments; Ukraine possesses reserves of critical minerals of the EU. Industry — support for the development of Ukrainian producers through grants, preferential programs and innovative projects.

Also, cross-sectoral directions in the reform of Ukraine should be noted as a separate type of reforms. Green transition — fight against illegal deforestation, development of waste processing, reduction of industrial pollution, increase of the level of environmental safety. Digital transformation — development of fast and secure communication, introduction of innovations, integration into the EU digital market. European integration — modernization of the economy, attraction of new technologies, increase of competitiveness.

The priority direction of the reforms is also the reconstruction of the destroyed infrastructure - housing stock, energy facilities, transport routes, medical and educational institutions, as well as other socially important areas. Considerable attention is paid to support programs for internally displaced persons, veterans, the elderly and other vulnerable categories of the population. Among the key areas are also the modernization of the education and healthcare systems, ensuring their accessibility and compliance with modern standards. The development of human capital is also envisaged through improving the qualifications of employees, creating modern programs of professional training, internships and retraining.

Considering this, many of the reforms outlined in the Ukraine Facility are constitutional in nature. Without amending or clarifying the Constitution's provisions, it is impossible to implement or ensure the long-term functioning of these reforms. This directly follows from the content of the reform blocks themselves, which address the foundations of state order, human rights, the system of government bodies, local self-government, and the principles of national security.

The Constitution of Ukraine establishes basic public administration principles, such as the rule of law, legality, state responsibility to citizens, citizen participation in state management, equality, transparency, and government accountability. These principles determine the scope of executive bodies' activities and serve as the framework for systemic reforms. According to Articles 3, 8, 19, 38, 40, and 50 of the Constitution, the state must make administrative decisions within these boundaries and guarantee the priority of human rights, transparency, and the accountability and responsibility of the government.

As already discussed in more detail in the previous sections, the Principle of Responsibility

of Executive Authorities (Officials) for the entrusted matter to the person and the state follows from the content of Articles 3, 17, 19 of the Constitution of Ukraine, etc. According to Article 3 of the Constitution, the state is responsible to the person for its activities. The establishment and provision of human rights and freedoms is the main duty of the state. Executive authorities are responsible to the President of Ukraine, controlled and accountable to the Verkhovna Rada of Ukraine within the limits provided for by Articles 85, 87 of the Constitution of Ukraine, to higher-level executive authorities, as well as to district and regional councils within the limits established by law. The decisions of higher authorities are binding on lower ones in accordance with the distribution of their powers. The relationship between higher and lower executive authorities is carried out based on subordination. The principle of the rule of law in Ukraine is enshrined in Article 8 of the Constitution. According to it, the Constitution of Ukraine has the highest legal force, and its norms are norms of direct action. Laws and other regulatory legal acts are adopted based on the Constitution of Ukraine and must comply with it. The principle of the rule of law not only means the highest legal force but also shows the superiority of law over the state and its bodies. The principle of legality is directly related to the principle of the rule of law and follow from it and is also based on the provisions of the Constitution of Ukraine. State authorities and local self-government bodies, their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine. The law has become the main source of law in Ukraine, adopted in accordance with the Constitution. The reality of legality is guaranteed primarily by the obligation of state bodies and their officials to adhere to it, responsibility to the people of Ukraine, as well as judicial control (including by the Constitutional Court of Ukraine), prosecutorial supervision, control by specially created executive bodies (inspections, administrations, commissions, committees) and the right of citizens to appeal to state and public bodies, including the court. According to Art. 38 of the Constitution of Ukraine, citizens have the right to participate in the management of state affairs, all-Ukrainian and local referendums, to freely elect and be elected to state authorities and local self-government bodies. Citizens participate in the implementation of state administration functions by uniting political parties and public organizations. Through such associations, citizens protect their rights and freedoms, satisfy political, economic, social, cultural and other interests. Citizens enjoy equal access to civil service, as well as to service in local self-government bodies. They have equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions on the grounds of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds. Constitutional rights and freedoms are guaranteed and cannot be abolished. Restrictions on participation in state

administration are established exclusively by law (sentenced to imprisonment, incapacitated). The principle of transparency in state administration is primarily associated with free access by citizens to information about the activities of executive bodies of all levels, except for information that is a state secret or other secret protected by law. Everyone is guaranteed the right to free access to information about the state of the environment, the quality of food products and household items, as well as the right to disseminate it. Such information cannot be classified by anyone (Article 50 of the Constitution). Everyone is guaranteed the right to know their rights and obligations. Laws and other regulatory legal acts that define the rights and obligations of citizens must be brought to the attention of the population in accordance with the procedure established by law, and those that are not brought to the attention of the public are invalid.

However, many of the Ukraine Facility Plan's provisions concern areas where the existing constitutional model either lacks sufficient detail regarding the necessary mechanisms or hinders rapid, systemic transformation.

The Ukraine Facility calls for a depoliticized, professional, and sustainable civil service; guarantees of the irreversibility of competitive selection; and minimization of the influence of political appointments. Meanwhile, Article 38 of the Ukrainian Constitution provides for equal access to the civil service but does not specify the need for professionalism, neutrality, and political independence of civil servants, as stipulated by European standards. It would be important to include European principles of civil service, particularly those concerning professionalism, apoliticality, integrity, and stability of service.

Ukraine is currently actively reforming the judicial system. If we look deeper, the judicial system has been reformed in Ukraine for 34 years since independence. Unfortunately, these processes were inextricably linked to the political component, many politicians built their political path on this, during this time the tasks, vision, and structure of the court system changed. The reform of the justice system is a key element on Ukraine's path to membership in the European Union. The plan provides for: updating the judicial corps, digitalization of judicial proceedings, guarantees of a high standard of independence. At present, the current Constitution of Ukraine has a basis for this, but the court system still has gaps in determining the status of the Supreme Court of Justice and the Supreme Judicial Council; there are no provisions on e-justice, which is an EU standard; The mechanisms of disciplinary liability of judges require additional constitutional regulation, the incompleteness of the justice system in public law disputes and the system of higher specialized courts, insufficient functional efficiency of judicial governance bodies, ensuring the integrity of judges, the effectiveness of the execution of court decisions, approval of the code of judicial ethics of judges of the Constitutional Court, determination of the grounds for disciplinary

liability of a judge of the Constitutional Court of Ukraine, improvement of the grounds and procedure for opening proceedings.

Ukraine is currently in the process of actively reforming its judicial system. In fact, the judicial system has undergone reform in Ukraine for 34 years since its independence. Unfortunately, these processes were inextricably linked to politics. Many politicians built their careers on this. During this time, the tasks, vision, and structure of the court system changed. Reforming the justice system is a key element of Ukraine's path to European Union membership. The plan includes updating the judicial corps, digitizing judicial proceedings, and ensuring a high standard of independence. Currently, the Constitution of Ukraine provides a basis for these reforms, but the court system still has gaps in determining the status of the Supreme Court of Justice and the Supreme Judicial Council. There are also no provisions for e-justice, which is an EU standard. The mechanisms for disciplining judges require additional constitutional regulation. The justice system is incomplete in public law disputes and in the system of higher specialized courts. The judicial governance bodies are insufficiently functional. There is a need to ensure the integrity of judges and the effectiveness of executing court decisions. The code of judicial ethics for judges of the Constitutional Court must be approved. The grounds and procedure for opening proceedings must be improved.

All this undoubtedly requires the introduction of relevant clarifications into the Constitution of Ukraine. A dialogue is underway regarding the Strategy for the Development of the Justice System and Constitutional Judiciary for five years[165] and its further implementation, competitive selection procedures are underway - however, there are many violations and inconsistencies that complicate and delay the implementation of real changes[166] to the judicial system in Ukraine and the corresponding Constitutional consolidation.

The current state of Ukraine's anti-corruption system and its efforts to combat money laundering, as well as the constitutional regulation of these efforts, do not align with the requirements of the Ukraine Facility. The document emphasizes full compliance with FATF and EU standards, the independence of anti-corruption bodies, and the reinforcement of financial monitoring. Meanwhile, the Constitution does not define the status of the following anti-corruption bodies: the National Anti-Corruption Bureau of Ukraine (NABU), the National Agency for Corruption Prevention (NACP), the Specialized Anti-Corruption Prosecutor's Office (SAPO), the Bureau of Economic Security of Ukraine (BEB), and the Supreme Anti-Corruption Court (VAKS).

[165]Official website of the President of Ukraine, The Office of the President Is Preparing a Draft Strategy for the Development of the Justice System and Constitutional Court Proceedings, 30.10.2024, https://www.president.gov.ua/en/news/ofis-prezidenta-gotuye-proyekt-strategiyi-rozvitku-sistemi-p-94161 , Accessed date: 24.11.2025

[166]L. Semishotsky, Law and Business Newspaper, Did the High Qualification Commission of Judges of Ukraine illegally eliminate 475 candidates from the competition for local courts?23.10.2025, https://zib.com.ua/ua/169402.html, Accessed date: 24.11.2025

This makes them vulnerable to political changes. It is crucial for Ukraine to establish a system of independent anti-corruption bodies at the constitutional level. Many EU member states, such as Romania and Bulgaria, have given key anti-corruption institutions constitutional status.

It is also important to pay attention to the constitutional regulation of economic reforms. The EU requires clear boundaries for the activities of independent regulators, as well as guarantees of their autonomy and transparency in the management of state property. However, Ukraine's constitution does not define the status of independent regulators, such as the National Commission for State Regulation in the Energy and Utilities Sector and the National Securities and Stock Market Commission. This does not meet European legal requirements and will require amendments to Ukraine's constitution.

It is also necessary to complete the decentralization reform and corresponding constitutional consolidation. The Ukraine Facility Plan requires completion of local government reform, clear distribution of powers, and sustainable financial support for communities. In Ukraine, the decentralization reform is practically implemented but legally incomplete. The Constitution of Ukraine does not contain the concepts of "community" or "district," nor is there a constitutional definition of the administrative-territorial structure that takes these concepts into account. It is important to amend Chapters IX and XV of the Constitution of Ukraine accordingly.

As I have discussed in previous sections of this work, environmental security has become a matter of national security in the context of war. The Ukraine Facility plan requires strengthening environmental protection, monitoring industrial risks, and restoring ecosystems. Once again, I emphasize that the Constitution of Ukraine (Article 50) establishes the right to a safe environment, yet it fails to define the concepts of "environmental security," "the state’s responsibility for environmental restoration," and "prevention of ecocide." Therefore, it is important to supplement the current constitution with norms on environmental security as part of national security (Article 16). The energy sector and constitutional guarantees of energy security remain open issues. The Ukraine Facility plan requires transitioning to sustainable energy and renewable sources and integrating energy with the EU. The Constitution contains only general norms regarding property and natural resources, not principles of energy security.

Ukraine has set a course for EU and NATO membership at the constitutional level (Articles 85, 102, and 116). However, the Constitution lacks a mechanism for implementing the EU acquis and does not include the principle of the supremacy of EU law. Additionally, it does not establish constitutional norms for participation in EU institutions after accession nor regulate international assistance and partnership. Therefore, it is important to adapt a model based on Poland's, Romania's, and Croatia's examples. These countries have introduced special European integration

norms that consider Ukraine's undeniable national characteristics and interests.

Many reforms fall under the category of exclusive constitutional regulation, so they cannot be implemented through laws or local regulations alone. The Ukraine Facility is, in fact, a roadmap for constitutional renewal in Ukraine, even though this is not explicitly stated. Post-war reconstruction and EU accession require the modernization of the state's constitutional foundations, including energy security, digital transformation, an anti-corruption system, decentralization, and environmental policy.

4.2. Strengthening the system for combating money laundering: from EU directives to Ukraine's adaptation, constitutional and legal aspect

The development of AML/CFT compliance standards in the European Union is closely linked to international initiatives, particularly those of the FATF[167].

The Financial Action Task Force (FATF) establishes universal requirements, including the criminalization of money laundering, the creation of central financial information offices, systems for the international exchange of information, and the freezing of assets. The FATF continuously assesses its members' compliance with the FATF Recommendations. The FATF's assessment process is based on two factors: technical compliance with the Recommendations and the effectiveness of systems to combat money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction.

On 30 May, the Council of the EU adopted a package of new rules to combat money laundering and terrorist financing (AML/CFT) – Resolution P9_TA (2024)0364[168], which had been approved by the European Parliament on 24 April. The new rules aim to close loopholes that criminals use to launder money or finance terrorism through the financial system. They also introduce new legal mechanisms to combat the circumvention of economic sanctions. Traders of high-value goods are added to the list of primary financial supervisory entities. This package comprises: 1) Directive VI on preventing the use of the financial system for money laundering and terrorist financing (AMLD6 – Directive (EU) 2024/1640)[169]. 2) A Single Rulebook for combating money laundering and terrorist financing (Single Rulebook)[170]. 3) A Regulation establishing an

[167]FATF. Methodology for Evaluating Technical Compliance with FATF Recommendations. Paris: FATF, 2022 (Revised as of October 2025), https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html , Accessed date: 24.11.2025

[168]European Union, Legislative resolution of the European Parliament of 24 April 2024 on the proposal for a Directive of the European Parliament and of the Council on the mechanisms to be established by Member States to prevent the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (COM(2021)0423 – C9-0342/2021 – 2021/0250(COD)), the Sixth Anti-Money Laundering Directive, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=EP:P9_TA(2024)0364 , Accessed date: 24.11.2025

[169]European Union, Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640 , Accessed date: 24.11.2025

[170]European Union, P9_TA(2024)0365 – Money Laundering Regulation – Resolution of the European Parliament of 24 April 2024

Anti-Money Laundering and Terrorist Financing Supervisory Authority (AMLA Regulation)[171]. 4) The updated regulation on money transfers, published in the Official Journal of the EU on 9 June 2023 (Regulation (EU) 2023/1113)[172].

On July 20, 2021, the European Commission presented a package of legislative proposals aimed at strengthening the fight against money laundering and terrorist financing. However, it was not adopted until late May 2024. Directive (EU) 2024/1640, the final version of AMLD 6, is a key element of this package. Adopted on May 31, 2024, it establishes mechanisms that enable states to prevent illicit financial systems from being used for money laundering or terrorist financing.

Money laundering is the practice of concealing the illegal origin of funds obtained through criminal activity. The term dates to the 1920s, when criminal organizations used coin-operated machines to mix the proceeds of illegal transactions with legal ones, creating the appearance that the funds had been acquired legally. Although the term "money laundering" emerged in the 20th century, the practice of concealing illicit enrichment dates to the beginnings of banking. For instance, when the Roman Catholic Church outlawed usury, or lending at interest, financiers in medieval Europe devised alternative ways to disguise such transactions, some of which persist to this day. The money laundering process generally consists of three phases: placement, concealment, and integration. "Placement" refers to introducing illegally acquired funds into the financial system, typically through deposits or purchasing assets. Money laundering involves a series of complex financial transactions designed to hide the origin of funds. Examples include transfers between multiple accounts, international transactions, and complex loan schemes. Integration occurs when the laundered funds are reintroduced into the legitimate economy and can be used without raising suspicion. As financial systems have become more complex and globalization has advanced, money laundering methods have also become more sophisticated. These methods have evolved in parallel with technological advancements and increased law enforcement measures. Consequently, the scope of money laundering has grown significantly in recent decades[173].

The globalization of financial markets and the growth of transnational criminal organizations have played a significant role in the development of large-scale systems for laundering illegally obtained funds.

The European Union has decided to create a common legal framework, as emphasized in

on the proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM(2021)0420 – C9-0339/2021 – 2021/0239(COD)) (Ordinary legislative procedure: first reading), ELI: http://data.europa.eu/eli/C/2025/3791/oj , Accessed date: 24.11.2025

[171]European Union, Verordnung (EU) 2024/1620 des Europäischen Parlaments und des Rates vom 31. Mai 2024 zur Errichtung der Behörde zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung und zur Änderung der

[172]European Union, Verordnung (EU) 2023/1113 des Europäischen Parlaments und des Rates vom 31. Mai 2023 über die Informationspflichten bei Geldtransfers und bestimmten Krypto-Assets und zur Änderung der Richtlinie (EU) 2015/849 (Text von Bedeutung für den EWR), ELI: http://data.europa.eu/eli/reg/2023/1113/oj , Accessed date: 24.11.2025

[173]Kelly Patricia O'Meara, „Dirty Dollars“, Insight Magazine, 15. May 2000, pp. 283-284.

the 2019 European Financial Stability and Integration Report: “Monitoring anti-money laundering, in particular the exchange of information and the coordination of measures between different authorities in a cross-border context, required immediate action at EU level[174].”

Directive (EU) 2024/1640, issued in 2024, further strengthened this framework and now targets new forms of money laundering. These include cross-border transactions involving digital assets, e-money, and crypto infrastructure, as well as complex schemes involving multinational companies and branches that are used to conceal the origin of funds.

It is important to establish supervisory procedures and integrated information exchange mechanisms and to ensure close cooperation between national and supranational authorities, including the Anti-Money Laundering Authority (AMLA)[175].

Directive (EU) 2024/1640 is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for harmonizing Member State laws within the internal market. The directive's primary goal is to address the gaps caused by the absence of effective mechanisms for cross-border cooperation among Member States in combating money laundering and terrorist financing. To ensure the exchange of information and harmonization of procedures throughout the Union while considering the specific characteristics of individual Member States' national systems, the Directive establishes minimum requirements. Furthermore, the directive provides for cooperation with third countries outside the EU by coordinating common compliance and supervisory standards, especially regarding the cross-border activities of financial institutions and companies operating in multiple jurisdictions. This is of crucial importance in the context of integration, globalization, and global security.

The AMLA coordinates work at the EU level, ensures the harmonization of compliance procedures, supervises transnational companies, and evaluates national risks of money laundering and terrorist financing. AMLA’s anti-money laundering legislation considers the variety of existing supervisory structures while ensuring a consistent approach and implementation of compliance standards in all member states. Prior to the adoption of Directive (EU) 2024/1640, monitoring of AML/CFT regulations occurred solely at the national level. Previous EU directives (the first five anti-money laundering directives) focused on establishing obligations for members states, financial institutions, and obliged entities. However, these directives did not provide for the establishment of a single supranational supervisory authority. Consequently, all monitoring, risk

[174]European Union, European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, European Financial Stability and Integration Report 2019, https://ec.europa.eu/info/files/european-financial-stability-and-integration-review-2019_en, Accessed date: 24.11.2025

[175]European Union, official website, Anti-Money Laundering Authority, https://www.amla.europa.eu/index_en , Accessed date: 24.11.2025

assessment, and compliance mechanisms remained under the exclusive jurisdiction of national authorities. This resulted in varying degrees of effectiveness and fragmented practices across Member States.

The need for anti-money laundering legislation has become even more pressing due to the need to tighten sanctions imposed on Russia because of the war in Ukraine.

The Anti-Money Laundering Authority (AMLA) was established to centralize supervision and harmonize AML/CFT procedures at the EU level. In accordance with EU Directive 2024/1640, the AMLA performs the following tasks: 1) Coordinate work at the Union level to ensure uniform risk assessments of money laundering and terrorist financing (Articles 41 and 42). The establishment of a central authority and information exchange provides a mechanism for the supranational coordination and assessment of money laundering and terrorist financing risks. Second, establish uniform compliance and monitoring standards for financial institutions, including transnational companies (Articles 43–44). Compliance is ensured through a system of internal controls, assessments, and information exchange. Third, ensuring the exchange of information between national supervisory authorities and harmonizing investigation procedures (Article 44) is crucial. Information exchange and risk assessment ensure effective compliance at the transnational level. Fourth, national systems and risks are assessed, weaknesses are identified, and measures to eliminate them are proposed (Article 45). Article 45 ensures continuous monitoring, assessment, and coordination at the national and transnational levels. This enables the AMLA and national authorities to effectively identify weaknesses in compliance and control systems.

The AMLA evaluates national systems and risks, identifies vulnerabilities, and suggests ways to eliminate them. Its anti-money laundering legislation addresses fragmented supervisory mechanisms and improves the implementation of anti-money laundering and anti-terrorist financing standards in all EU member states.

Directive (EU) 2024/1640 provides mechanisms for supranational monitoring and harmonization of these standards. The preamble states: "During implementation, it was found that there is a lack of sufficiently effective rules for cross-border cooperation. It is therefore appropriate to establish clearly formulated requirements that should contribute to smooth cooperation throughout the Union..." (paragraphs 3–4).

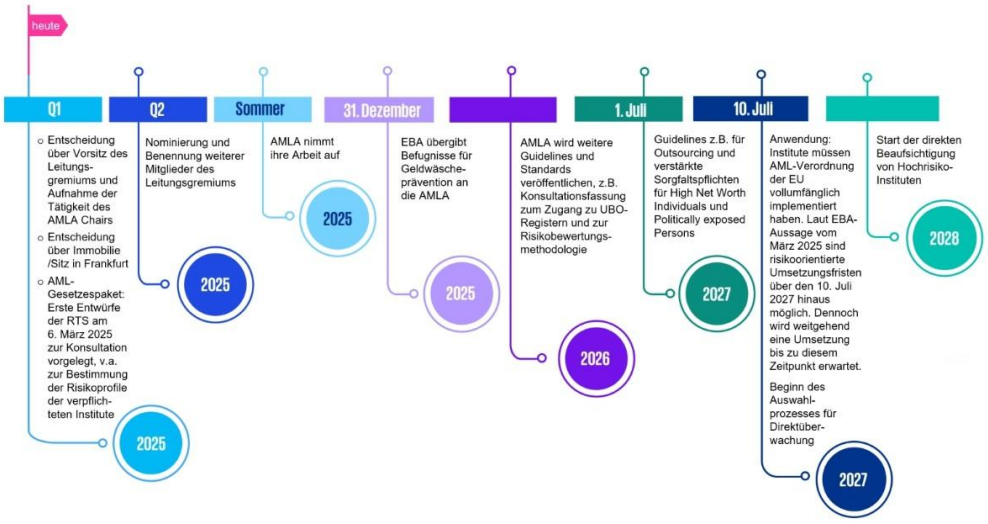
Thus, the directive introduces uniform standards for internal financial monitoring and supervision, as well as an obligation for Member States to adopt standards that ensure smooth cooperation across the EU.

Although these standards must be adapted to the specific characteristics of national

systems, they operate within a uniform minimum framework.

In this context, AMLA has already initiated practical steps to establish its institutional structure. These steps are crucial for banks, financial service providers, and other obliged entities that need to adapt their internal procedures in advance to the new requirements of the EU's Single Supervisory Mechanism[176]. This process is illustrated graphically on the KPMG website.

Timeline: "EU Anti-Money Laundering Authority (AMLA) – The next milestones":



[176] Financial Service Hub, T. Prkott, G.E. Fischer, L. Schnier, EU Anti-Money Laundering Agency AMLA: The next milestones. Our timeline helps companies prepare for the new requirements. March 18, 2025, https://klardenker.kpmg.de/financialservices-hub/eu-antigeldwaeschebehoerde-amla-die-naechsten-meilensteine/ , Accessed date: 24.11.2025

Source:

https://klardenker.kpmg.de/financialservices-hub/eu-antigeldwaeschebehoerde-amla-die-naechsten-meilensteine/

The EU's AML/CFT system does not exist in isolation from the global economy. Criminal activities and security risks in non-European countries ("third countries") have a direct impact on EU territory. Drug trafficking, human trafficking[177], and arms trafficking harm[178] both the countries of origin[179] and European society, the economy, and security. EU approaches to combating money laundering and terrorist financing take this internalization of external risks into account, as even proceeds generated exclusively in third countries (e.g., through the corruption of foreign officials) can flow into the EU economy, support organized criminal groups, and burden law enforcement agencies and public institutions[180].

The success of the EU's anti-money laundering and counter-terrorist financing strategy depends on cooperation beyond the EU's borders and the willingness and capacity of third countries to cooperate. Key elements include interacting with the Financial Action Task Force (FATF) and other international organizations, cooperating with third-country supervisory authorities, conducting risk assessments for high-risk third countries, and applying specific measures, such as enhanced due diligence, to financial and non-financial organizations conducting transactions with these countries.

The EU actively uses soft law in its relations with third countries to ensure flexible cooperation in the areas of security and AML/CFT. This includes communications, strategies, measures, and memoranda. Although these documents are not formally binding (Article 288 TFEU), they facilitate cooperation in practice. In the area of external relations, the use of soft law allows the EU to flexibly structure its cooperation framework with third countries. This includes, among other things, diplomatic dialogue and information exchange, the conclusion of multilateral and bilateral agreements, and the development of joint strategies, action plans, and memorandum of understanding[181].

The new European anti-money laundering architecture divides regulation into a macro and a micro level: At the macro level, Directive 2024/1640 (AMLD6) imposes obligations on Member

[177]European Border and Coast Guard Agency (Frontex), Risk Analysis 2021, Warsaw 2021, p. 14.
[178]Europol, The European Union's Threat Analysis of Serious and Organized Crime (SOCTA), The Hague 2021, p. 57.
[179]European Monitoring Centre for Drugs and Drug Addiction & Europol, EU Drugs Markets Report: In-depth Analysis, Luxembourg 2016, p. 62; United Nations Office on Drugs and Crime, World Drug Report 2021, Vienna 2021, p. 51.
[180]T.A. Börzel, Y. Pamuk, A. Stahn, "Combating Corruption Abroad: The EU's Export of Good Governance", in: S. Wolf & D. Schmidt-Pfister (eds.), Anti-Corruption Regimes in Europe: Between Corruption, Integration and Culture, Baden-Baden 2010, pp. 47–68; Georgios Pavlidis, "Asset Recovery: A Swiss Leap Forward?", 20 Journal of Money Laundering Control (2017), pp. 150–158.
[181]G. Pavlidis, The global fight against money laundering: Informal synergies between the FATF and the EU list of high-risk third countries, Swiss Review of International and European Law, Vol. 2022/1, pp. 4-6, https://ssrn.com/abstract=4574864 , Accessed date: 24.11.2025

States, including national risk assessments, statistical analysis, supervision, coordination, and the establishment of cooperation mechanisms with third countries. At the micro level, Regulation 2024/1624 (Anti-Money Laundering Directive/Single Rulebook)[182] applies, containing directly applicable (immediately binding) rules for obliged entities. These include uniform rules for cooperation with third countries, the definition of "high-risk third countries," a list of specific enhanced due diligence measures, and possible countermeasures for a given country. These two legal acts complement each other: The Directive establishes a framework for Member States, while the Regulation contains specific obligations for financial and non-financial companies.

This approach aims to harmonize the rules within the Union and strengthen the external dimension of regulation. Since financial flows are not bound by EU borders, the effectiveness of this system hinges on cooperation with third countries.

Directive (EU) 2024/1640 and Regulation (EU) 2024/1624 include provisions regarding interactions with third countries, the definition of "high-risk third countries," and due diligence implementation with respect to these countries.

Enhanced due diligence (EDD) comprises additional control measures that reporting entities must implement when dealing with clients or carrying out high-risk transactions. Regulation (EU) 2024/1624 (Chapter III) clearly defines the concept and mechanism of EDD. EDD goes beyond the basic Know Your Customer (KYC) principle by including the collection of additional information about clients, beneficial owners, and the origin of funds, as well as a more in-depth analysis of financial transactions, monitoring of cross-border transactions, and the imposition of sanctions if clients or counterparties have links to a "high-risk third country."

Directive (EU) 2024/1640 establishes risk assessments at the EU and national levels. Article 7 ("Risk Assessment at the Union Level") stipulates that the Commission will assess the risks of money laundering and terrorist financing at the EU level. This assessment must be considered when carrying out national assessments and defining measures relating to third countries. Article 8 ("National Risk Assessment") also requires the inclusion of information on third countries in national and sectoral risk assessments. The directive requires that information on third countries be considered in national assessments and refers to information obtained in accordance with Regulation (EU) 2024/1624. Attention is also paid to keeping statistics (Article 9). To review the effectiveness of their anti-money laundering and terrorist financing frameworks, Member States must maintain comprehensive statistics on relevant matters. The supervisory bodies' work also addresses the interaction between supervisory authorities and the involvement

[182]European Union, Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance), https://eur-lex.europa.eu/eli/reg/2024/1624/oj/eng , Accessed date: 24.11.2025

of third countries. Articles 49–51 describe the mechanisms for establishing AML/CFT bodies (supervisory bodies) for cross-border groups. This includes the possibility of involving third countries as observers or participants, if data protection regulations and professional confidentiality are respected. Fourth, the directive addresses the establishment of legal mechanisms for exchanging information with third countries. Article 51 allows member states to conclude cooperation agreements with supervisory authorities of third countries if data protection regulations and equivalent requirements regarding professional confidentiality are respected.

This shows that although the directive requires states to conduct risk assessments and establish channels of interaction with third countries, it does not provide a specific list of "high-risk" countries.

The regulation contains detailed rules regarding third countries. Articles 29–31 establish the procedures for identifying and categorizing third countries based on risk. These articles describe the procedure and criteria by which the Commission identifies high-risk third countries through delegated/implementing acts. High-risk countries have "strategic deficiencies" in anti-money laundering and counter-terrorist financing, which are comparable to the Financial Action Task Force's "call for action." Comprehensive due diligence and possible countermeasures apply to these countries. Third countries with compliance weaknesses may have certain due diligence obligations, but they are not as stringent as those for high-risk countries.

The Regulation establishes the criteria for classification, which include the legal framework for combating money laundering and terrorist financing, due diligence toward third parties, record-keeping obligations, cooperation, and the effectiveness of systems. It establishes the following criteria: A legal framework for combating money laundering and terrorist financing; due diligence towards third parties; record-keeping obligations; cooperation; effectiveness of systems.

Secondly, the Regulation provides for enhanced customer due diligence (CDD) and specific measures, particularly pursuant to Article 34(4) and the related list. This list contains specific EDD measures that may be mandatory for people or businesses with high-risk third countries. A delegated act specifies which measures apply to a particular country. Third, the Regulation establishes country-specific countermeasures, particularly in Articles 29(5) and 31. The Commission may establish country-specific countermeasures for high-risk third countries, such as restrictions on business relationships, mandatory additional reporting forms, and prohibitions on certain types of correspondent banking relationships.

The list of countermeasures is included in the regulation. See the article on countermeasures for more information. Fourth, the Regulation contains specific provisions for

correspondent banking relationships. Article 38 provides special measures for certain third countries. Article 39 also prohibits establishing or continuing correspondent banking relationships with shell companies. Fifth, the Regulation provides for review procedures and the involvement of the AMLA. Third countries are identified, delegated acts are adopted, and lists are reviewed with the participation of the AMLA and based on information from the FATF, national authorities, and other sources. Delegated acts are reviewed regularly. Articles 29–31 govern the identification of third countries, the assessment of strategic and operational risks, and the drafting of delegated acts with the participation of the AMLA, the FATF, and national authorities. Article 34 establishes the procedures for periodically reviewing the lists of third countries and possible countermeasures. Articles 36 and 46 grant the AMLA additional powers regarding monitoring, consultation, and implementation of the Regulation. These powers include a procedure for reviewing and updating delegated acts.

The FATF is also worth mentioning about interaction with third countries. It is an example of informal international standards for combating money laundering and terrorist financing. Although the FATF is not a formal international treaty, its 40 recommendations and associated guidance have evolved into global standards adopted by many states into their national laws.

The FATF influences third countries through informal networks in which regional groups apply and monitor the implementation of FATF standards through processes of mutual assessment and compliance monitoring, as well as through blacklists and gray lists of non-cooperating countries. These lists encourage these countries to implement reforms to combat money laundering and terrorist financing. Due to the flexibility and informal nature of its activities, FATF standards rapidly adapt to new threats, such as cryptocurrencies, and are disseminated in over 200 countries. This results in global coordination that affects non-FATF member states as well, since they often implement the standards as a precautionary measure to avoid the negative consequences of being blacklisted. Thus, the FATF's informal methods have a significant impact on the development of national and regional anti-money laundering and counter-terrorist financing systems. These methods even compel non-members to align their legislation and practices with international standards. Mechanisms are in place to exert pressure on these countries to ensure that appropriate reforms are implemented, transparency is increased, and control of financial flows is strengthened to prevent money laundering and terrorist financing, and European standards are transposed into the national legislation of third countries.

Combating money laundering and terrorist financing is a global problem that extends far beyond the EU. Ukraine's situation requires particular attention because its financial system and economy still largely operate in the shadow economy due to the massive influence of the shadow

economy following the collapse of the Soviet Union. These systems are increasingly exposed to serious external and internal risks due to Russia's large-scale invasion. In light of the current challenges and Ukraine's integration processes in preparation for EU accession, effectively and practically supporting the integration of Ukraine's anti-money laundering and counterterrorist financing systems into the European and global contexts is paramount. Coordinating with international organizations and partners is equally important to ensure financial stability and security.

On 10 June 2025, the European Commission adopted a new Delegated Regulation on third countries with strategic deficiencies in their anti-money laundering and terrorist financing systems. This Regulation amends Delegated Regulation (EU) 2016/1675[183].

Ukraine is not currently on the list of countries with "strategic deficits" in the fight against money laundering and terrorist financing.

Ukrainian Law No. 361-IX "On the Prevention and Combating of the Legalization (Money Laundering) of Proceeds from Crime, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction" is of central importance to Ukraine's national legislation on combating money laundering and terrorist financing[184].

This law complies with existing Financial Action Task Force (FATF) standards and EU directives (the 4th and 5th Anti-Money Laundering Directives). However, due to the integration processes and updates to EU legislation in this area, Ukrainian legislation on combating money laundering and terrorist financing must actively transform to reflect these updates to EU standards and FATF requirements.

Comprehensive adaptation of national legislation is essential to ensure compliance with international standards and the effectiveness of the national anti-money laundering and terrorist financing system. An important first step is amending Ukrainian Law No. 361-IX. These amendments aim to align with updated international standards and EU practices, including provisions on a risk-based approach, customer due diligence, and cooperation with third-country financial institutions. Second, anti-money laundering and counterterrorist financing controls must be strengthened, particularly by expanding the scope of information that reporting entities must

[183]European Union, Commission Delegated Regulation (EU) 2025/1184 of 10 June 2025 amending Delegated Regulation (EU) 2016/1675 to include Algeria, Angola, Côte d'Ivoire, Kenya, Laos, Lebanon, Monaco, Namibia, Nepal and Venezuela on the list of high-risk third countries that have made a high-level written political commitment to address the identified deficiencies and have developed an action plan with the FATF, and to remove Barbados, Gibraltar, Jamaica, Panama, the Philippines, Senegal, Uganda and the United Arab Emirates from that list, C/2025/3815, ELI: http://data.europa.eu/eli/reg_del/2025/1184/oj, Accessed date: 24.11.2025

[184]Verkhovna Rada of Ukraine, Law of Ukraine on the Prevention and Combating of the Legalization (Money Laundering) of Proceeds from Crime, Terrorist Financing and the Financing of the Proliferation of Weapons of Mass Destruction (Official Gazette of the Verkhovna Rada of Ukraine (BVR), 2020, No. 25, Article 171), https://zakon.rada.gov.ua/laws/show/361-20?lang=en#Text, Accessed date: 24.11.2025

provide during audits. This includes extending the powers of financial supervisory authorities to participants in the virtual asset market, especially those dealing with crypto-assets, as well as strengthening monitoring of compliance with anti-money laundering and counter-terrorist financing laws.

This includes AML/CFT by financial institutions and companies operating in national and international markets; the introduction of regulations on virtual assets; the associated expansion of the scope of supervision; and the introduction of provisions on the transparency of beneficial owners and the control of intermediary companies.

Currently, financial supervision in Ukraine applies to banks, non-bank financial institutions, insurance companies, brokers, and currency exchange offices. As previously mentioned, the updated legislation proposes expanding this list to include virtual asset market participants and providers of digital financial services, among others. There are also plans to tighten requirements for financial institutions regarding reporting suspicious transactions, monitoring cross-border payments, and surveilling clients from high-risk countries.

Ukrainian anti-money laundering and anti-terrorist financing procedures currently include standard KYC mechanisms, internal controls, and risk analysis. The updated legislation should require all businesses to implement a risk-based approach. This includes collecting more information during KYC checks, such as data on beneficial owners, and strengthening the requirements for internal policies and transaction monitoring systems.

Further development of international cooperation requires the following measures: introduction of mechanisms for actively exchanging information with the EU on high-risk third countries; development of domestic procedures for risk assessing third countries based on FATF recommendations and EU methodology; creation of a "positive support program" for partner countries to address strategic shortcomings in the fight against AML/CFT Companies and supervisory authorities should continuously train their staff on AML/CFT topics, implement internal control procedures according to current international standards, and actively cooperate with supervisory authorities. This includes participating in FATF and EU inspection programs. The expected results of these adaptations include greater transparency of financial transactions, reduced risks of money laundering and terrorist financing, an improved Ukraine ranking in international AML/CFT assessments and safeguarding the competitiveness of Ukrainian companies in the international market.

4.3 Harmonization of national Ukrainian legislation with EU law: history and practical steps

Russia's full-scale invasion of Ukraine has significantly impacted the development of

relations between Ukraine and the EU. Cooperation has increased, as has support to ensure Ukrainian norms and standards comply with European requirements.

Ukraine's strategic model of European integration is a comprehensive, long-term, and consistent approach. While not formalized in a single document, it establishes general development directions, identifies key priorities, and defines criteria indicating a state's readiness for European Union membership. This process provides for a systematic analysis and constant monitoring of results, as well as the timely introduction of necessary adjustments, to ensure Ukraine's sustainable movement towards full integration into the European political and legal space.

Undoubtedly, European integration is of great importance to Ukraine in terms of building democracy, increasing security in all spheres, developing the social and economic sectors, and establishing the rule of law.

It is important to note that the European Union remains Ukraine’s main trading partner. In 2024, the EU accounted for over 50% of Ukraine’s trade turnover, amounting to approximately €67.2 billion — more than double the figures since the Deep and Comprehensive Free Trade Agreement (DCFTA) took effect in 2016. The updated DCFTA took effect on October 29, 2025, providing for further mutually beneficial trade liberalization and deeper harmonization of Ukrainian and European production standards while considering the sensitivity of certain EU agricultural sectors. This step is an important milestone in Ukraine’s gradual integration into the EU Single Market. The Priority Action Plan for Enhanced Implementation of the DCFTA for 2025–2026 outlines specific measures to ensure the Agreement's full implementation and grant Ukraine additional access to the Single Market. In response to the global threat to food security posed by Russia’s war against Ukraine and the blockade of Ukrainian ports, the Euro-Ukrainian Solidarity Routes were established to facilitate the export and import of goods via alternative rail, road, and inland waterway routes. According to Ukrainian customs records, as of May 2022, the routes had facilitated the export of approximately 193 million tons of goods, including nearly 87 million tons of grain, oilseeds, and related products, as well as the import of around 83 million tons of essential goods. The total value of trade through the routes as of May 2022 is approximately €231 billion, of which €166 billion is imports to Ukraine[185].

Ukraine's economic achievements demonstrate its close trade interaction with the EU and create the prerequisites for implementing European standards in public administration, the legal system, and socioeconomic development. This lays the foundation for Ukraine's deeper integration

[185]European Commission, The EU and Ukraine, November 2025, https://enlargement.ec.europa.eu/document/download/a335f242-2938-4846-8db9-2f27f875e4fa_en?filename=Ukraine%20country%20fiche.pdf , Accessed date: 24.11.2025

into the European political, economic, and legal spaces.

Due to the war in Ukraine, in addition to trade, the EU has expanded immigration opportunities for Ukraine. Even before the war, Ukraine and the EU had bilateral agreements on immigration. In 2022, the EU Directive on Temporary Protection (2001/55/EC) was activated, providing Ukrainian citizens with the right to residence, employment, and free movement in EU member states[186].

As Kh. Romaniv notes, "since Ukraine is a part of Europe and European culture, integration processes with European structures are objectively determined by both national and cultural development and, undoubtedly, legal. Such integration is a natural process in the conditions of national revival, growing awareness by the people of Ukraine of their European identity and their basic national interests[187]".

Legal regulation involves organizing social processes by granting participants legal rights and obligations based on objective laws of social development and the principles of the rule of law. This creates a stable regulatory and legal system. In this context, European integration is not only a foreign policy, but also a deep legal process that aims to modernize national legal systems in accordance with EU law. This implies creating the necessary legal framework based on the existing one, if possible, to organize Ukraine's integration into the European space and achieve its full membership in the European Union.

Ukraine's success in its European integration largely depends on effectively implementing pro-European reforms in various spheres of public life and properly adapting national legislation to EU law. At the same time, Ukraine's current state, amidst a full-scale war with Russia, distinguishes it significantly from other European Union candidate states. The Ukrainian Centre for Economic and Political Studies correctly states that "the main feature of the current stage of movement toward the EU is that our country, at great cost and through enormous sacrifices, is defending its European choice and protecting the EU from Russian aggression." Unlike other candidate countries, a complex set of geopolitical, political, and security factors focus on Ukraine, which are of decisive importance for the future structure of Europe and the world." This is the exclusivity and weight of Ukraine's European integration[188]."

One of the key criteria for the effectiveness of Ukraine's European integration process is

[186]European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, https://eur-lex.europa.eu/eli/dir/2001/55/oj/eng, Accessed date: 24.11.2025

[187]Romaniv Kh. European integration of national private law as a condition for legal progress. Materials of the V All-Ukrainian Scientific and Practical Conference (Lviv, December 10, 2021) / edited by I. V. Krasnytsky. Lviv: Lviv State University of Internal Affairs. 2021. P. 384

[188]Ukraine on the path to the EU: realities and prospects. No. 1–2 (187–188). 2022. Oleksandr Razumkov Ukrainian Center for Economic and Political Studies. P.62. URL: https://razumkov.org.ua/images/journal/NSD187-188_2022_ukr_full.pdf , Accessed date: 24.11.2025

aligning the political, legal, economic, and social spheres with European norms and standards. Achieving such compliance requires profound legal field transformations that regulate these areas. It is important to note that the concept of the "mechanism of legal regulation" is complex and multidimensional because it encompasses, generalizes, and systematizes all regulatory properties of law.

J. Habermas, a representative of the Frankfurt School, offers a conceptually different approach to understanding legal influence by analyzing the interaction of law, democracy, and social structures. According to his theory, law is not a static system of norms, but rather, it is considered in connection with communication processes, social integration, and institutional evolution. This view enables us to grasp how various types of social relations established historically outside legal regulation and those formed directly within the framework of legal procedures — are incorporated into the legal sphere in different ways.

In this context, Habermas's approach demonstrates that the boundaries of legal regulation are not fixed: law is constantly changing under the influence of social communication, the development of institutions and the complication of social interaction. His theory emphasizes the dynamism and mobility of legal order, which cannot be defined once and for all, but evolves together with democratic processes and the demands of society[189].

This problem is relevant for Ukraine because successful European integration requires not only improved legislation but also awareness of the limits of regulatory effectiveness under martial law, during public administration transformation, and in changing constitutional and legal models. This is why Ukrainian legal scholars are increasingly analyzing which social processes can be regulated by law and which require political, social, or institutional mechanisms of influence.

Given the intensification of Ukraine's aspirations for European integration, it is important to outline the key stages of interaction between the Ukrainian state and the European Union, as well as to analyze the regulatory legal acts that form the basis of this cooperation. Undeniably, the issue of legal certainty in European integration must be considered in historical retrospect. Ukraine's relations with the EU began in December 1991 when Hans van den Broek, the Dutch Minister of Foreign Affairs (whose country was then presiding over the EU), recognized Ukraine's independence on behalf of the EU.

In 1998, the Interdepartmental Coordination Council for the Adaptation of Ukrainian Legislation to EU Legislation was established. The task of the newly established commission was to synchronize Ukrainian legislation with European legislation, with the coordination of these

[189]S. Benhabib, The American Political Science Review, «Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy. By Juergen Habermas. Cambridge, MA: MIT Press, 1996, Vol. 91, No. 3 (September, 1997), pp. 725-726, http://www.jstor.org/stable/2952099, Accessed date: 24.11.2025

processes being entrusted to the Ministry of Justice[190].

Cooperation with the EU continued throughout Ukraine's challenging process of establishing its statehood, international legal identity, and foreign policy guidelines. Ukrainian researchers I. Shcherbatiuk and E. Kadebska distinguish two basic periods of partnership development, with which one can agree. 1. From 1991 to 2014, a systemic political dialogue emerged, partnership relations were established in various social spheres, and a contractual and legal basis for cooperation was developed and implemented. During this period, the Ukrainian state's European integration vector was gradually established. 2. From 2014 to the present: a new qualitative basis for interaction is being acquired. Within the framework of the Association Agreement, the Ukraine-EU partnership has achieved the final consolidation of Ukraine's irreversible European integration course and joint opposition to Russian aggression[191].

The main regulatory and legal document that defined the legal mechanism of bilateral cooperation between Ukraine and the EU was the Partnership and Cooperation Agreement between Ukraine and the EU, which was signed on June 16, 1994, and entered into force on March 1, 1998, only after it was ratified by the parliaments of all EU member states. The next step was the approval on June 11, 1998, of the “Strategy for Ukraine’s Integration into the European Union”, which proclaimed the country’s strategic goal to “become part of the European political (in particular foreign and security policy), information, economic and legal space”. The strategy declared that “Ukraine’s national interests require its emergence as an influential European state, a full member of the EU”[192].

In this regard, in August 1999, the Cabinet of Ministers of Ukraine approved the Concept of Adaptation of the Legal System of Ukraine to the Legal System of the European Union. Subsequently, the mechanism, stages and sequence of bringing national legislation into compliance with European law were defined in detail by the Law of Ukraine “On the National Program for Adaptation of the Legislation of Ukraine to the Legislation of the EU” No. 1629-IV (2004)[193]. The adoption of this Law confirmed the establishment of a state priority for Ukraine’s integration into the EU.

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[190]Yamkovy V.I. Harmonization of Ukrainian legislation with EU law as one of the stages of its adaptation to European legal standards. Legal Journal of Donbas, 2018, No. 2, pp. 33-39.

[191]Shcherbatiuk, I., Kadebska, E. (2023).The process of interaction between Ukraine and the EU in the system of international relations, Rebuild Ukraine, the cause of the entire civilized world, Tower-Print, 13.04.2023, P. 203–207, https://evnuir.vnu.edu.ua/bitstream/123456789/22254/1/205-210.pdf, Accessed date: 24.11.2025

[192]Ukraine: 30 Years on the European Path/ Y.Yakymenko et al. The Ukrainian Centre for Economic and Political Studies named after Olexander Razumkov, Kyiv, «Zapovit» Publishing House, 2021, 392 p. http://archiv.iep-berlin.de/wp-content/uploads/2021/10/2021-independence.pdf?it=wp-content/uploads/2021/10/2021-independence.pdf, Accessed date: 24.11.2025

[193]Verkhovna Rada of Ukraine, official website, Document 1629-IV, valid, current version — Revision on November 4, 2018, on the basis - 2581-VIII , On the State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Unio, https://zakon.rada.gov.ua/laws/show/1629-15?lang=en#Text, Accessed date: 24.11.2025

Since the law took effect, every draft law submitted to the Verkhovna Rada of Ukraine has been subject to a mandatory review by the VRU Committee on European Integration. The Committee is authorized to provide an opinion on whether the draft law complies with EU legal acts and determine if it falls under the scope of the acquis Communautaire.

The law defined institutional mechanisms for adapting Ukrainian legislation to EU law within the legislative and executive branches of government. The Verkhovna Rada of Ukraine is responsible for providing legislative support for the adaptation process, adopting decisions on adjusting the state program, defining its goals at each stage, and conducting expert assessments of draft laws to ensure their compliance with EU norms. The Cabinet of Ministers of Ukraine is responsible for the practical implementation of the program, determination of the necessary tools and resources, approval of annual action plans, and forecasting of implementation results.

The adaptation of legislation is an integral part of integration processes and is based on a comprehensive state mechanism for its implementation. This process includes several stages, each involving specific tasks. These tasks include determining which EU legal acts are subject to adaptation according to their regulatory scope, translating the selected regulatory acts, analyzing and comparing Ukrainian legislation with EU legislation, developing recommendations to align national legislation with the EU acquis, conducting long-term legal analyses, planning and determining the stages of legislative work, monitoring EU legal acts and their implementation status in Ukraine, and checking existing laws, draft laws, and subordinate regulatory legal acts for compliance with EU legislation.

The most effective mechanism for Ukraine is the adaptation mechanism. Under this mechanism, national legislation gradually aligned with international legal standards by amending existing regulatory legal acts or adopting new laws that consider the requirements of EU law.

As previously mentioned, Ukraine signed the Association Agreement with the European Union in 2014: the political part on March 21 and the economic part on June 27. The Agreement was not finally ratified until September 2017. This agreement became the key legal foundation for Ukraine's national and sectoral development within the framework of the European integration process.

In October 2017, the Cabinet of Ministers of Ukraine adopted the Resolution “On the Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand” dated 25.10.2017 No. 1106[194], which determined the practical mechanisms for

[194] Verkhovna Rada of Ukraine, official website, Document 1106-2017-п, valid, current version — Revision on September 18, 2020, on the basis - 808-2020-p, https://zakon.rada.gov.ua/laws/show/1106-2017- %D0%BF?lang=en#Text , Accessed date: 24.11.2025

implementing the obligations stipulated by the Agreement.

Ukraine does not formally implement the agreement as an international treaty but rather implements its provisions by amending national legislation to align with the norms enshrined in the agreement. This approach is consistent with the content and logic of adapting Ukrainian legislation to EU law.

Also, it is important to mention, that in September 2000, a large-scale Program for Ukraine's Integration into the European Union came into force, covering 140 chapters. Each of them provided an analysis of the current situation and identified short-, medium- and long-term priorities (from 2000 to 2007). Among the key tasks of the Program was the need to create prerequisites that would ensure the possibility of Ukraine's future accession to the EU. The state's strategic course for European integration was later enshrined in the Law "On the Principles of Domestic and Foreign Policy"[195], which establishes the main guidelines for domestic and foreign policy. In this law, the European integration vector is defined as one of the fundamental principles of the state's foreign policy activities - in particular, through the desire for Ukraine's full entry into the political, economic and legal space of the European Union. In June 2017, the Verkhovna Rada adopted amendments to the law “On the Principles of Domestic and Foreign Policy,” which enshrined Ukraine’s movement toward EU and NATO membership. In 2018, President Petro Poroshenko initiated the enshrining of a provision on EU and NATO integration in the Constitution. Later, on 7 February 2019, the Verkhovna Rada adopted amendments to the Fundamental Law regarding the country’s strategic course toward full EU and NATO membership. The strengthening of Ukraine's partnership with the EU began with the beginning of Russian aggression in the East of the country in 2014, and after Russia's full-scale invasion in February 2022, relations have significantly strengthened: the European Union confirmed its readiness to integrate the war-torn state by quickly approving its application for membership and granting candidate status in June 2022. In December 2023, the European Council decided to open negotiations on Ukraine's accession to the EU, but on condition that Ukraine completes further reforms aimed at ensuring the rule of law and effective governance.

In 2023, an important regulatory and legal document was adopted - the Resolution of the Cabinet of Ministers of Ukraine of February 28, 2023 "On Approval of the Procedure for Conducting an Initial Assessment of the Status of Implementation of EU Law Acts (EU acquis)"[196],

[195]Verkhovna Rada of Ukraine, official website, Document 2411-VI, valid, current version — Revision on August 30, 2025, on the basis - 4579-IX, https://zakon.rada.gov.ua/laws/show/2411-17?lang=en#Text , Accessed date: 24.11.2025

[196]Verkhovna Rada of Ukraine, Document 189-2023-p, Resolution of the Cabinet of Ministers of Ukraine of February 28, 2023 "On Approval of the Procedure for Conducting an Initial Assessment of the Status of Implementation of EU Law Acts (EU acquis)”, valid, current version — Adoption on February 28, 2023, https://zakon.rada.gov.ua/laws/show/189-2023-%D0%BF?lang=en#Text , Accessed date: 24.11.2025

which allowed for the analysis of the achievements and mistakes of the Ukrainian state on the path of European integration.

The initial assessment aims to determine the status of the implementation of European Union law (EU acquis) through the negotiation chapters (35 chapters), and to prepare the draft National Program for the Implementation of Ukrainian Legislation with the EU acquis, taking its results into account.

On September 30, 2025, Ukraine, together with the European Commission, completed the official screening of the compliance of Ukrainian legislation with EU law[197].

On November 4, 2025, the European Commission published the annual report as part of the 2024 EU Enlargement Package. The report provides a detailed evaluation of Ukraine's progress in implementing reforms across all negotiation chapters, as well as the country's readiness for EU accession. According to the report, progress was noted within Cluster 1, "Fundamentals of the EU Accession Process," in the areas of justice, freedom, and security. There was also an improved assessment of public administration reforms, financial control, and compliance with economic criteria. In Cluster 2, "Internal Market," Ukraine received higher scores for freedom of movement of workers and training in consumer protection and healthcare. The restoration of market surveillance and transition to sectoral control in accordance with European standards were also positively evaluated.

Cluster 3, "Competitiveness and Inclusive Development," became one of the most dynamic areas in 2025. Ukraine made significant progress in six out of eight negotiation chapters, indicating the country's potential for swiftly adopting the EU acquis (European law). In Cluster 4, "Green Agenda and Sustainable Connection," Ukraine demonstrated positive results in environmental and climate policy. Notably, an update to the National Energy and Climate Plan has begun, the energy security system is being reformed, and the country is aligning with European trans-European network policy. In Cluster 5, "Resources, Agriculture, and Cohesion Policy," Ukraine's progress in Chapter 11, "Agriculture," is notable. This progress is the result of Ukraine's systematic work to adapt its agricultural policy to European standards. Regarding Cluster 6, "External Relations," Ukraine has consistently demonstrated a high level of alignment with EU policies. The European Commission noted progress in Chapter 31, the Common Foreign and Security Policy. Ukrainian positions are 99% compliant with EU positions, and Ukraine supports 79 out of 80 foreign policy and sanctions practice declarations. Additionally, the European Commission confirmed that Ukraine has fulfilled all the prerequisites for opening negotiations on Clusters 1, 2, and 6. Next,

[197]European Commission, Directorate-General for Enlargement and Eastern Neighborhood, Ukraine successfully completes its screening process, 30.09.2025, https://enlargement.ec.europa.eu/news/ukraine-successfully-completes-its-screening-process-2025-09-30_en , Accessed date: 24.11.2025

the recommendations of the 2025 Report will be implemented, along with the roadmaps in the areas of the rule of law, public administration reform, the functioning of democratic institutions, and the Action Plan for the protection of national minorities[198].

The government is also working on the development of the National Program for the Adaptation of Ukrainian Legislation to the EU Acquis (NPAA), which will be a comprehensive plan to bring Ukrainian legislation into line with EU standards[199].At the same time, Ukraine should continue to actively implement these standards into its legislation, ensuring that legislative changes are translated into practical, enforceable regulations in all relevant sectors.

At the same time, it is important to emphasize that Ukraine's successful European integration requires combining work on amending the Constitution with the practical implementation of EU acquis provisions. Currently, the process of constitutional reform is on hold, which, in my opinion, creates limitations to the systemic development of Ukraine's legal framework. Constitutional changes establish fundamental principles of the rule of law and democratic standards. Practical implementation of these norms in legislation and institutional activities yields tangible results. Only by working in both areas simultaneously can we effectively and systematically bring the Ukrainian legal system closer to European standards and accelerate integration into the EU.

4.4 European integration as a factor in constitutional changes in Ukraine

The experience of European Union member states shows that successfully implementing European norms begins with constitutionally consolidating basic principles. This ensures the subsequent systematic alignment of national legislation with the acquis Communautaire. Portugal's experience is illustrative. After the 1974 Revolution and the adoption of the 1976 Constitution, the country consistently formed the legal framework for EU membership (then the European Economic Community).

Portugal's experience demonstrates an effective "constitutional start" to European integration. In the 1976 Constitution, Portugal established a European development vector — Article 7 established the principle of participating in international integration and being open to supranational structures. Then, through constitutional amendments in 1982 and 1989, Portugal adapted its legal system to EU requirements. The system of state power was reformed to increase parliamentary control. The economic foundations were modernized by repealing provisions related

[198] European Commission, Commission Staff Working Document, Ukraine 2025 Report, SWD (2025) 759 final, 04.11.2025, https://eu-ua.kmu.gov.ua/wp-content/uploads/EU-enlargement-.pdf , Accessed date: 24.11.2025

[199]The Ministry of Justice of Ukraine, official website, The Ministry of Justice has launched the development of the National Program for Adapting Legislation to EU Law 08.05.2025, https://minjust.gov.ua/news/ministry/minyust-zapustiv-rozrobku-natsionalnoi-programi-adaptatsii-zakonodavstva-do-prava-es , Accessed date: 24.11.2025

to the "socialist economy," and conditions for market competition were created. Additionally, the possibility of transferring sovereign powers to supranational institutions was expanded. The constitution directly enshrines the priority of European law. After the 1989 amendments, Article 8 included a paragraph providing for the priority of European Community norms in the event of conflicts with national laws. Only after these constitutional changes did a large-scale update of legislation occur, including the liberalization of the economy, judicial system reforms, and updates to antitrust, customs, and financial legislation. This was possible because constitutional obstacles to EU membership were overcome. Thus, Portugal's experience confirms that the real success of European integration begins at the constitutional level. As with other candidate countries, it is important for Ukraine to carry out sufficient constitutional adaptation, which will form the basis for systematically updating legislation and fully implementing the EU acquis. The scientific and legal justification for this approach is detailed in the constitutional and legal analysis of the Portuguese Republic.[200].

Portugal's experience demonstrates that enshrining European principles in the constitution establishes a solid legal foundation for systematically aligning national legislation with the EU acquis. Similarly, for Ukraine, the constitutional level plays a key role in its path toward European integration.

Ukraine's Constitution establishes the fundamental principles through which the state interacts with other countries and international organizations. Article 18 of the Fundamental Law, for example, stipulates that Ukraine's foreign policy should protect national interests and ensure state security by fostering peaceful, mutually beneficial relations with the international community based on universally recognized principles and norms of international law. As I mentioned earlier, important amendments were made to the Ukrainian Constitution in 2019, consolidating the irreversibility of the state's European and Euro-Atlantic course. Following these amendments, Ukraine's constitution contains provisions that constitute the minimum requirements for beginning systematic and consistent work on Ukraine's integration into the EU.

For Ukraine's harmonious entry into the EU, it is important to determine the content and scope of the concept of "European integration." Broadly speaking, European integration encompasses all forms of cooperation between European states, including socio-economic, political, educational, and cultural cooperation, as well as various associations, such as the Council of Europe, the Organization for Security and Cooperation in Europe, and the EU. In a narrower sense, European integration refers to the political and institutional process of joining the EU, i.e.,

[200]F.Pereira Coutinho, N. Piçarr, Asser Press, National Reports, Springers Open, National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, Portugal: The Impact of European Integration and the Economic Crisis on the Identity of the Constitution, 2019, pp. 591-639, https://doi.org/10.1007/978-94-6265-273-6 , Accessed date: 24.11.2025

the creation and operation of its institutions and mechanisms.

Thus, Ukraine's constitutional law must ensure the effective implementation of European integration in both senses, from harmonizing national legislation and complying with international obligations to preparing for full EU membership.

At the same time, the Venice Commission has repeatedly emphasized that effective implementation of European standards in legislation and the activities of institutions is impossible without proper constitutional consolidation of the principles of the rule of law, separation of powers, and ensuring the independence of the judiciary. This position was presented in detail at the event "Venice Commission and Ukraine," held on October 23, 2025, as part of a joint project between the Constitutional Court of Ukraine and the National School of Judges of Ukraine. During the event, Veronika Bilkova, the Vice-President of the Venice Commission and Professor of Public International Law at Charles University in Prague, emphasized that constitutional reform, the separation of powers, judicial reform, and ensuring the independence of the judicial system remain key issues for Ukraine, as does the protection of human rights in accordance with EU standards. Without implementing the Commission's recommendations, constitutional principles of public administration will remain insufficiently strengthened, hindering the effective implementation of the EU acquis and full approximation of Ukrainian law to European standards[201].

The Treaty on European Union sets out the conditions (Article 49) and principles (Article 6(1)) to which any country wishing to become a member of the European Union (EU) must conform – the Copenhagen criteria. According to the Copenhagen criteria[202], which define three basic areas of reforms necessary for accession to the European Union and which have a clear constitutional dimension, without which their proper implementation is impossible: 1) The political criterion provides for the stability of democratic institutions, guaranteeing the rule of law, human rights and protection of national minorities. For Ukraine, this means the need for constitutional consolidation of an effective separation of powers, judicial independence and real mechanisms of constitutional control. 2) The economic criterion requires the functioning of an effective market economy and the ability to withstand competitive pressure on the EU internal market. The constitution forms the foundations of the state's economic system, defines guarantees of property, freedom of enterprise and financial stability, which is a prerequisite for adaptation to the European market environment. 3) The legal criterion is the state's ability to assume and fulfill the obligations of membership, including the implementation of EU law (acquis communautaire).

[201]The Constitutional Court of Ukraine, “Venice Commission and Ukraine”, 23.10.2025, The video recording of the event is available at the link: https://www.youtube.com/watch?v=SotneA95oVs , Accessed date: 24.11.2025

[202]European Union, Accession criteria (Copenhagen criteria), https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html , Accessed date: 24.11.2025

This requires constitutional assurance of the rule of law, the effectiveness of state institutions and mechanisms for harmonizing national legislation with EU law.

Thus, the Copenhagen criteria lead directly to the need for deep constitutional renewal, not just of individual regulatory legal acts. It is the Constitution that determines the legal and institutional architecture. Without this, the political, economic, and legal requirements of the EU remain merely declarative. Implementing common European values and principles in Ukraine and implementing the components of the Copenhagen criteria is possible only through constitutional law. Constitutional law establishes the foundation of a state's legal system by enshrining its fundamental values, principles, and the structure of state power. European values — the rule of law, democracy, human rights, and the separation of powers — must be enshrined in the constitution to be binding on all branches of government and to be legally implemented. The constitution defines the framework and mechanisms through which the state interacts with international organizations, directly affecting the implementation of international obligations, particularly the Copenhagen criteria. Reflecting European values in the constitution transforms them into legislative norms that regulate the activities of state bodies and the rights of citizens. This is key to implementing the Copenhagen criteria.

The enshrinement of European values and principles in the constitution establishes a legal basis for implementing the Copenhagen criteria. Equally important is the role of the Constitutional Court of Ukraine, which ensures that laws and other normative acts comply with the Constitution and, consequently, European standards. Through its monitoring and interpretation of the Constitution, the Court legitimately and consistently integrates reforms into the state's legal system.

When implementing EU law, harmonizing European standards with the national Constitution's provisions is particularly important. This is why the Verkhovna Rada Committee on European Integration's activities are closely linked to the Committee on Legal Policy's work. The latter is responsible for analyzing the constitutionality of draft laws. In practice, this means that even if a draft act complies with EU law, it cannot be adopted if it conflicts with the Constitution. This situation demonstrates that implementing European norms often requires more than adopting ordinary legislation; it also requires amending the Fundamental Law. After all, the Fundamental Law determines the architecture of state power, the system of checks and balances, the scope of human rights, and the mechanisms for protecting them. Therefore, constitutional reform is a prerequisite for fully implementing European standards and fulfilling the Copenhagen criteria.

According to Article 147 of the Constitution of Ukraine, the Constitutional Court of Ukraine has the exclusive authority to oversee the constitutionality of laws and other regulatory

acts. It is responsible for ensuring that laws align with the principles of the rule of law and democracy, thereby guaranteeing that reforms adhere to European standards. The Constitutional Court adopts decisions on the interpretation of the Constitution and laws of Ukraine under martial law, in accordance with the Rules of Procedure of the Constitutional Court. Without constitutional consolidation, it is impossible to ensure the legitimacy and legal regulation of reforms are sustainable, as future changes to legislation may be inconsistent or reversed. According to Doctor of Law and Professor O. Sovhyri, certain peculiarities of constitutional proceedings exist during wartime. These include the consideration of cases mainly in written proceedings, the publication of case materials on the official website of the Constitutional Court of Ukraine, the introduction of an electronic form for a constitutional complaint, and the postponement of the loss of validity of acts determined to be unconstitutional[203].

The European Commission has identified the reform of the Constitutional Court of Ukraine as one of the key requirements for the implementation of the Copenhagen criteria. Efficiency, independence, and integrity of constitutional justice directly impact a state's ability to uphold the rule of law, protect fundamental human rights and freedoms, and maintain stable democratic institutions — the principles that form the basis of the political criteria for EU membership.

To implement this requirement, the Verkhovna Rada adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Improving the Procedure for Selecting Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis"[204]. This law introduced a competitive, transparent procedure for selecting judges of the Constitutional Court, aimed at reducing political influence and strengthening professional criteria. At the same time, the Venice Commission raised concerns about the insufficient regulatory regulation of the activities of the Advisory Group of Experts, which plays a key role in assessing the professional qualifications and integrity of candidates. The Commission stressed that in the absence of clear procedures and guarantees of the independence of this body, the reform may not reach European standards.

It is important to emphasize that, according to Ukrainian famous scientists in the field of the constitutional law Y.Barabash and O.Boryslavska, the official constitutional doctrine is not only a theoretical concept, but also an effective practice that forms the system of legal values and the stability of the legal order. In their work "Constitutional Jurisprudence (Official Constitutional

[203]O. Sovhyria. Rule of Law in Wartime: Challenges for the Constitutional Judiciary of Ukraine. Visions of the Future: Constitutional Dimension of Ukraine's Post-War Restoration and European Integration: Collection of Materials and Abstracts of the II Mariupol Constitutional Forum (Kyiv, October 6, 2023). Kyiv: VAITE, 2023. P. 140-146, https://ccu.gov.ua/publikaciya/olga-sovgyrya-verhovenstvo-prava-v-umovah-viyny-vyklyky-dlya-konstytuciynogo , Accessed date: 24.11.2025

[204]Verhovna Rada of Ukraine, official website, Document 2846-IX, valid, current version — Adoption on December 13, 2022, https://zakon.rada.gov.ua/laws/show/2846-20?lang=en#Text , Accessed date: 24.11.2025

Doctrine) in Ukraine: Problems of Formation" they draw attention to the fact that it is the decisions of the Constitutional Court that should acquire the status of "normative acts of interpretation", which become an essential element of the legal system[205].

According to the authors' analysis, the influence of the Soviet legacy on the academic understanding of the sources of constitutional law in Ukraine is still felt. This hinders a complete comprehension of the role of constitutional jurisprudence. Consequently, the official doctrine remains insufficiently defined, and the Constitutional Court of Ukraine's legal positions sometimes change without proper justification, undermining its predictability.

At the same time, Barabash and Borislavska note that in recent years, especially after the beginning of Russia's armed aggression, the Constitutional Court of Ukraine has formed a number of decisions in which constitutional values - dignity, freedoms, the rule of law - are clearly articulated as fundamental, and not simply declarative. This gives grounds to argument that even in times of crisis, the official constitutional doctrine begins to realize its axiological function - not only to interpret the Constitution, but also to protect its value content.

Therefore, the further development of constitutional jurisprudence in Ukraine should focus on three key areas. 1) systematization of the official doctrine, which involves formalizing the constitutional positions of the Constitutional Court of Ukraine within a system of precedents, interpretations, and axiological principles; Second, strengthening the motivational argumentation of decisions, especially in high-profile cases, is essential to ensuring trust in the Constitutional Court of Ukraine and the legitimacy of its resolutions. Third, constitutionally enshrining interpretation mechanisms ensures that the official doctrine is legally binding and cannot be changed at will by other branches of government.

These concerns confirm once again that implementing the Copenhagen criteria solely through amendments to the current legislation is impossible. A truly independent and effective system of constitutional control requires constitutional guarantees, particularly a clearer consolidation of the status, powers, and appointment process of Constitutional Court judges.

According to the latest Report on the Implementation of the Association Agreement between Ukraine and the EU[206], the overall progress in implementing the provisions of the Agreement for the period 2014–2024 increased from 72% in 2022 to 77% in 2023 and reached 81% in 2024. This indicates a gradual but steady approximation of Ukrainian legislation and the

[205]Y. Barabash, O. Borislavska, Constitutional Court of Ukraine, II. Practical and legal problems of institutional design of the Constitutional Court of Ukraine, Constitutional jurisprudence (official constitutional doctrine) in Ukraine: problems of formation, DOI: 10.33498/louu-2023-07-053, https://ccu.gov.ua/sites/default/files/barabash_yu._boryslavska_o._konstytuciyna_yurysprudenciya_oficiyna_konstytuciyna_doktryna_v_ukrayini_problemy_stanovlennya.pdf? Accessed date: 24.11.2025

[206]EU and UA, Report on Implementation of the Association Agreement between Ukraine and the European Union for 2024, https://eu-ua.kmu.gov.ua/wp-content/uploads/Zvit-Ugoda-pro-asotsiatsiyu-EN.pdf? Accessed date: 24.11.2025

practice of its application to European Union standards. The main areas of progress are bringing national legislation into line with the requirements of European law, reforming key institutions, strengthening the independence of the judiciary and protecting human rights, which reflects the gradual implementation of the political and economic parts of the Agreement. These data confirm the effectiveness of the mechanism for adapting legislation and the need for further steps, including constitutional amendments, to fully implement European standards in Ukraine.

Thus, Ukraine's progress toward EU membership hinges on the coherence of constitutional norms, the activities of the Constitutional Court, and the broader process of aligning national legislation with the European Union's acquis. Without systemic coherence, reforms will remain fragmented and the sustainability of European integration will not be sufficiently guaranteed.

Conclusions to the 4th Chapter:

Globalization processes determine the external context in which law functions: integration into international financial and legal systems, unification of legal regimes, and the implementation of European standards. These processes create the prerequisites for constitutional changes that would formalize Ukraine's commitment to aligning its legislation with EU norms. It is important that new legal norms comply with economic, political, legal, and other social laws, contributing to the progressive development of society and individuals through the state's use of legal regulatory methods.

For Ukraine, as with many other transitional democracies, the issue of the boundaries of legal regulation is highly relevant, given its long history of totalitarian governance. This issue requires updating considering international cooperation and financial support from foreign partners. Following Russia’s full-scale invasion of Ukraine in 2022, the country received unprecedented support from the EU and its member states. This support included financial, military, and humanitarian resources worth around €177.5 billion, as well as an additional €45 billion loan from the G7. To use these funds effectively, the EU created the Ukraine Facility, which allocates funds to three main areas: direct state financing in the form of grants and loans; an investment mechanism to attract private and public investment to the country’s recovery and reconstruction; and technical assistance and support for reforms. The Ukraine Facility is linked to the Ukraine Plan, which includes basic institutional reforms, economic changes, and the development of key economic sectors, as well as cross-sectoral areas such as green transformation, digitalization, and European integration.

The effective implementation of the Ukraine Facility requires financial planning and an appropriate legal and institutional framework in Ukraine that aligns with constitutional provisions. Structural reforms affect the foundations of the state system, the system of government, the rights

and freedoms of citizens, and the principles of national security and governance. Ukraine's constitution enshrines the principles of the rule of law, legality, government accountability and transparency, citizen participation in public administration, and state responsibility to its citizens. These principles should form the basis for implementing reforms.

In the context of the Ukraine Facility, effectively integrating Ukraine into the European AML/CFT system is critical. The EU's institutional and financial support involves allocating funds for recovery and establishing transparent governance, control, and accountability mechanisms. These mechanisms are essential for constitutionally ensuring the effective use of financial resources.

The EU has created a unified AML/CFT architecture, including Directive (EU) 2024/1640 (AMLD6) and the Anti-Money Laundering and Counter-Terrorist Financing Authority (AMLA). This architecture ensures coordination and harmonization of standards, as well as supervision of financial institutions, including transnational companies.

The EU AML/CFT system incorporates an external dimension that facilitates interaction with third countries and risk assessment of high-risk countries. This is particularly important for Ukraine in the context of war and integration into the European financial space.

Although Ukraine has national legislation (Law No. 361-IX) that aligns with FATF standards and previous EU directives, it must be updated to align with the new AMLD6 norms and modern international standards. This includes adopting a risk-based approach, exercising control over crypto-assets, and expanding the authority of supervisory bodies.

Improving the AML/CFT system will increase transparency in financial flows, reduce the risk of money laundering and terrorist financing, and improve Ukraine's international reputation and the competitiveness of Ukrainian companies in the global market.

Modernizing financial supervision and combating money laundering are not only EU legal requirements, but also key elements for effectively implementing the Ukraine Facility. Transparency, accountability, and control over financial flows directly affect the success of reforms, investment attractiveness, and the sustainable development of the Ukrainian economy.

European integration is a complex, long-term, and consistent strategic course for Ukraine, aimed at gradually aligning with European political, legal, and economic standards. This process includes systematic analysis, monitoring, and adjustment of national reforms. Successful integration requires the synchronous development of constitutional and legislative fields because constitutional changes consolidate fundamental principles of the rule of law, democracy, and human rights, while legislative adaptation ensures the practical implementation of these principles. Thus, implementing the Ukraine Facility and ensuring the long-term effectiveness of reforms

requires harmonizing the legislative, constitutional, and institutional frameworks. This will enable Ukraine to effectively utilize international support to rebuild its economy and infrastructure, strengthen state institutions, and enhance transparency, accountability, and the protection of citizens' rights. This creates the basis for strategic planning, stable economic development, and Ukraine's integration into European and global structures while minimizing the risks of fund misuse or bureaucratic obstacles.

In conclusion, successfully using EU support and implementing large-scale reforms requires updating constitutional norms, clearly coordinating government bodies, and having a strategic vision for the country's development. This will ensure Ukraine's stability, efficiency, and long-term independence.

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