



ENSURING THE IRREVERSIBILITY OF UKRAINE'S EUROPEAN AND EURO-ATLANTIC COURSE

(Constitutional and Legal Aspects)

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June 25, 2023 marked a year since Ukraine was granted the candidate status for membership in the European Union, by virtue whereof the European Commission has issued an oral update on Ukraine's progress in fulfilling conditions to launch EU membership talks. According to European colleagues, Ukraine has fully met two out of seven criteria and has made significant «progress» in implementing the other five «recommendations», formulated along with Ukraine getting the EU candidate status.¹

Ukraine attaches high hopes to the NATO Summit 2023, which is scheduled on July 11-12, 2023, in Vilnius, Lithuania. After all, most Ukrainians consider the country's accession to NATO as the best option for ensuring national security after the Russian aggression.

Ukraine's full membership in the European Union and the North Atlantic Treaty Organization is a strategic task for the country. It will be hardly achieved, if the irreversibility of the European and Euro-Atlantic course, enshrined in the amendments to the Constitution of Ukraine on February 7, 2019, is not properly ensured.

1. CONSTITUTIONAL AMENDMENTS ON THE STRATEGIC COURSE OF THE STATE TOWARDS FULL MEMBERSHIP OF UKRAINE IN THE EUROPEAN UNION AND NORTH ATLANTIC TREATY ORGANIZATION

Content and goal of constitutional amendments

The constitutional amendments of 2019 supplemented the preamble of Ukraine's Basic Law with provisions according to which «the Verkhovna Rada of Ukraine, on behalf of the Ukrainian people» adopted the Constitution of Ukraine «confirming» (also – P.S.) «the European identity of the Ukrainian people and the irreversibility of the European and

Euro-Atlantic course of Ukraine» (paragraph five of the Preamble to the Constitution of Ukraine). At the same time, the Verkhovna Rada was charged with «determining the principles of domestic and foreign policy, implementing the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization» (clause 5, part 1, Article 85 of the Constitution of Ukraine); the Cabinet of Ministers was entrusted with ensuring the implementation of this course (clause 1/1, Article 116 of the Constitution of Ukraine), and the head of state – the President of Ukraine – was to become the ultimate «guarantor» of all these processes (part 2, Article 103 of the Constitution of Ukraine).² In line with the newly adopted amendments, paragraph 14

¹ «Two out of seven». Will Ukraine have time to meet all the criteria to start negotiations on EU accession? – URL: <https://www.radiosvoboda.org/a/ukraine-eu-eurointegration-reforms/32472741.html> (in Ukrainian)

² On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization). Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2019, No. 9, p. 50.

of Title XV «Transitional Provisions», which previously established that «the use of the existing military bases on the territory of Ukraine for the temporary stationing of foreign military formations shall be possible on the terms of lease, in compliance with a procedure determined by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine» was removed from the text of the Constitution of Ukraine.³

The goal of the adopted constitutional amendments was to «legislate the civilizational choice of the European identity of the Ukrainian people in the Constitution of Ukraine», and the direct way to achieving it was to gain full membership in the European Union and the North Atlantic Treaty Organization.⁴ That is why, when proposing to supplement the Constitution with the above provisions, the President (Petro Poroshenko at that time) as the holder of the right of legislative initiative entitled to submit bills amending the Basic Law, proceeded from the fact that for the Ukrainian people, integration into the EU and NATO is equal to ensuring the independence of our state.⁵ He argued that it was «the attempt of Yanukovich's reactionary regime to abandon the European and Euro-Atlantic course of the state that caused the Revolution of Dignity, which was driven by supporters of the European idea, and that Russia's ongoing armed aggression is aimed at blocking Ukraine's integration into the single European space».⁶

According to the President, the Ukrainian people's determination to repel and deter Russian aggression was convincing evidence of the nationwide support for Ukraine's civilizational choice. The President also argued that Ukraine had sufficient political and legal prerequisites for full integration into the EU

and NATO, and Ukraine's right to integrate into the EU is enshrined in Article 49 of the Treaty on European Union, which states that any European state which respects the EU's common values may apply to become a member of the Union. Ukraine's belonging to the Western civilization is reflected in the Association Agreement, which recognizes the country's European aspirations and European choice, and in the decision of the 2008 Bucharest NATO Summit to confirm Ukraine's future membership in the organization.⁷ In that situation, it was also extremely important that broad public support for the European and Euro-Atlantic choice in Ukraine was, in fact, due to our country's European civilizational identity, its close and long-standing relations with members of the European and Euro-Atlantic communities, based on common civilizational values.

Legal nature and peculiarities of the 2019 constitutional innovations on the strategic course of the state

The constitutional amendments of 2019 concerning the state's strategic course towards full membership in the EU and NATO were only one of seven changes that the Constitution of Ukraine has undergone in its quarter-century history.⁸ These amendments were the penultimate in terms of their adoption (the last ones concerned the immunity of MPs)⁹ and fully implemented within the timeframe of the Verkhovna Rada of the eighth convocation (2014-2019) and, accordingly, in close cooperation with the fifth President of Ukraine Petro Poroshenko.

By volume, these changes can hardly be equated with such «sizeable» constitutional amendments as those of 2004 (redistribution of power between the head of state, parliament

³ Ibid.

⁴ Explanatory Note to the Draft Law «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)», https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64531.

⁵ The draft law «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)» was submitted to the Verkhovna Rada by President Poroshenko on September 3, 2018.

⁶ Ibid.

⁷ Ibid.

⁸ For more detail, see: Anthology of Constitutional Development in Modern Ukraine, Razumkov Center, ed. V. Musiyaka. – Kyiv: Zapovit Publishing House, 2017. 781 p. (in Ukrainian)

⁹ On Amendments to Article 80 of the Constitution of Ukraine (concerning the immunity of people's deputies of Ukraine). Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2019, No. 38, p. 160.

and government aimed at Ukraine's transition from a «presidential-parliamentary» to a «parliamentary-presidential» republic),¹⁰ or the changes of 2016 concerning justice.¹¹ However, in terms of their significance for the future of the Ukrainian people and for the constitutional development of Ukraine, these changes may be the most important among all domestic constitutional innovations, as it became particularly evident after February 24, 2022.

By their essence, the provisions of the Law of Ukraine «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)» are totally consistent with the provisions of Articles 1, 8, 15, 16, 35 and 56 of the Constitution, as the basic characteristics of a modern European state since the end of the 20th century have been its democratic, secular, multicultural, social, environmental and legal nature. Accordingly, the national constitutional and legal fabric was supplemented with such independent constitutional categories and phenomena as «European identity of the Ukrainian people», «irreversibility of Ukraine's European and Euro-Atlantic course», «strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization».

By their legal nature, the provisions of the Law «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)» are norms of the highest legal force with all the consequences thereof. After all, they became an integral part («body») of the Constitution following their adoption. Since then, laws and other legal acts must comply with these provisions, and it became possible to directly apply to the court on their basis to protect constitutional rights and freedoms of a person and a citizen (Article 8 of the Constitution of Ukraine).

In addition, since February 2019, any international treaties that contravene the «irreversibility of Ukraine's European and Euro-Atlantic course» or do not correspond to the content of the «strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization» are unacceptable and unconstitutional (Part 2, Article 9 of the Constitution of Ukraine).

In addition, all these provisions have acquired a so-called «direct» law enforcement character, including the provisions added to the preamble (paragraph five «confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine»). Some authors' attempts to give the latter the character of only the so-called «intention» (a wish)¹² are erroneous, since the constitution-makers in this case «confirm» (*the action of a fait accompli* – P.S.) «the irreversibility of Ukraine's European and Euro-Atlantic course», but not «seek to create» or «aim to establish» such a course of the state.

Hence, in February 2019, the constitution-makers did not express a wish to create/establish, etc. «Ukraine's European and Euro-Atlantic course» in the future, nor did they establish/implement such a course of the state, but only «confirmed» its «irreversibility» and thus they constituted the very fact of its existence as an integral part of the existence of the Ukrainian people. At the same time, the constitution-makers partially detailed the content of this phenomenon by identifying the «core» and at the same time a priority task – «full membership of Ukraine in the European Union and the North Atlantic Treaty Organization» (clause 5, part 1, Article 85; part 2, Article 103; clause 1/1, Article 116 of the Constitution of Ukraine). That is why the latter is called «strategic».

Such an understanding of the legal nature of the above constitutional provisions enables proper substantiation of the very existence of

¹⁰ On Amendments to the Constitution of Ukraine. Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2005, No. 2, p. 44.

¹¹ On Amendments to the Constitution of Ukraine (concerning justice). Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2016, No. 28, p. 532.

¹² V.V. Homonay. Constitutional and Legal Support for Ukraine's Full Membership in the European Union and the North Atlantic Treaty Organization: a monograph. Kherson, Helvetica Publishing House, 2020, p. 68. (In Ukrainian)

the obligation to «ensure the irreversibility of Ukraine's European and Euro-Atlantic course» for all subjects of constitutional and legal relations without exception.

Foreign experience of constitutional regulation of European and Euro-Atlantic integration

The creation of the European Union and the North Atlantic Treaty Organization, and especially their later expansion with the admission of new members, has objectively triggered appropriate amendments to the constitutions of the EU and NATO members. At the same time, the practice of constitutional regulation of European and Euro-Atlantic integration has varied from the adoption of small clarifying provisions with no direct reference to European and Euro-Atlantic integration to the introduction of entire special sections.

Thus, the preamble to the Constitution of Montenegro (2007) states: «the dedication to cooperation on equal footing with other nations and states and to the European and Euro-Atlantic integrations, the Constitutional Assembly of the Republic of Montenegro <...> adopts the Constitution of the Republic of Montenegro».¹³ The Constitution of Romania (1991) contains a separate Title VI «Euro-Atlantic Integration», where Articles 148 («Integration into the European Union») and 149 («Accession to the North Atlantic Treaty») establish the procedure for the country's accession to the EU and NATO.¹⁴

The Constitution of the Republic of Croatia (1990) also contains a separate Title VIII «European Union», in which Article 143 («Legal grounds for membership and transfer of constitutional powers»), in particular, states that «the Republic of Croatia shall, as a Member State of the European Union, participate in the creation of European unity in order to ensure, together with other European states, lasting peace, liberty, security and prosperity, and to attain other common objectives in keeping

with the founding principles and values of the European Union».¹⁵ The following articles of Title VIII regulate Croatia's participation in the EU institutions (Article 144), the application of EU law on its territory (Article 145) and the rights of EU citizens (Article 146).¹⁶

The Constitution of the French Republic (1958)¹⁷ also has a separate Title XV «On the European Communities and the European Union», and the current Basic Law of Germany (1949) contains relevant provisions in its preamble and Articles 23 and 24.¹⁸

With the constitutional amendments of 2019, Ukraine has just commenced on its «path» of constitutional regulation of full membership in the European Union and the North Atlantic Treaty Organization (clause 5, part 1, Article 85; part 2, Article 103; clause 1/1, Article 116 of the Constitution of Ukraine). This «path» is only part of a more general, world-view-based, and civilization-defining process of Ukraine's European and Euro-Atlantic course. With the country's accession to the EU and NATO, there will obviously be a need for further improvement/development of the constitutional regulation of the process of European and Euro-Atlantic integration.

2. IMPLEMENTATION OF CONSTITUTIONAL PROVISIONS ON THE IRREVERSIBILITY OF UKRAINE'S EUROPEAN AND EURO-ATLANTIC COURSE

The state of implementation of constitutional innovations before the full-scale Russian invasion

For the first three years starting in February 2019, the fulfilment/implementation of the constitutional provisions of the Law of Ukraine «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)» was hardly

¹³ Устав Црне Горе («Службени лист РЦГ», бр. 1/2007), <https://www.wipo.int/wipolex/fr/text/585077>. (In Montenegrin).

¹⁴ The Constitution of Romania, <https://legalns.com/download/books/cons/romania.pdf> <https://romanianpass.com/constitution-romania/>.

¹⁵ USTAV REPUBLIKE HRVATSKE, <https://www.wipo.int/wipolex/ru/text/583525>.

¹⁶ Ibid.

¹⁷ The Constitution of the French Republic (with a foreword by Volodymyr Shapoval). V. Shapoval – Kyiv: O.M. Moskalenko, 2018, p. 53-54.

¹⁸ Grundgesetz für die Bundesrepublik Deutschland, <https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz> (in German)

visible, although it was a perfect time when their practical implementation could have significantly «eased» Ukraine's difficult internal and external situation.

After all, it was a period of the permanent threat of Russia's full-scale military invasion, its ongoing hybrid war against Ukraine in all possible forms and by all possible means, sweeping political repression in the temporarily occupied Crimea and certain areas of Donetsk and Luhansk regions. Finally, it was the time of coronavirus pandemic, a deep economic crisis, a significant deterioration in the environmental situation due to global warming, etc. Obviously, the fulfilment of said constitutional provisions should have applied to all subjects of their implementation directly defined by the Basic Law (parliament, government, and the head of state).

The understanding of the value (axiological) potential of the 2019 constitutional amendments changed dramatically with the onset of Russia's full-scale military aggression in late February 2022. The heroic struggle of the Ukrainian people and its Armed Forces against the Russian invaders not only forced the country's political leadership to return to the implementation of the constitutional tasks of Ukraine joining the EU and NATO, but rightly attracted the attention of almost all EU members to these processes.

We firmly believe that the heroic resistance of the Ukrainian Defense Forces to the Russian invaders, the massive nationwide volunteer movement, and the total rejection of the Russian military by Ukrainian citizens in the temporarily occupied territories were decisive in granting Ukraine the status of an EU candidate on June 25, 2022. However, in doing so, the European Commission has put forward a number of requirements for Ukraine, which, if not met, may result in the revocation of said status.

The European Commission's requirements articulated when granting the EU candidate status to Ukraine and the status of their implementation.

The Commission, recommends that Ukraine be granted candidate status, on the understanding that the following steps are

taken: 1) enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations; 2) finalize the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidate to establish the High Qualification Commission of Judges of Ukraine; 3) further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialized Anti-Corruption Prosecutor's Office (SAPO) through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine; 4) ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment; 5) implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation; 6) tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator; 7) finalize the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission.¹⁹

Many of these requirements were linked to the need to continue judicial and legal reform, strengthen civil society, and promote democracy in Ukraine. In the meantime, despite the fact that fulfilling all these requirements was in the best interest of the Ukrainian state itself and seemed to be nothing more than purely «technical» and time-limited activity of the relevant state authorities, the effectiveness of effort to fulfil said requirements gave rise to justified concerns already within several months. After all, the only resolved issue from the above list was

¹⁹ Candidate status: Ukraine will be able to fulfill seven EU requirements and implement reforms, <https://www.ukrinform.ua/rubric-polytics/3509936-status-kandidata-ukraina-zmoze-vikonati-7-vimog-es-ta-provesti-reformi.html> (In Ukrainian)

the completion of the procedure for appointing a new head of the SAPO by certifying the winner of the competition.²⁰

In early February 2023, the EU-Ukraine summit took place in Kyiv, in which Ukraine participated for the first time as an EU candidate. For objective reasons, the state of Ukraine's fulfillment of the above requirements was in the spotlight. On the eve of the summit, Ukraine's Prime Minister, Denys Shmyhal stated that the country had fulfilled all the requirements that were set when it was granted the candidate status.²¹ Obviously, the Prime Minister's position in this case reflected a general vision of the situation, which in no way denied Ukraine's further systematic work in this direction and the country's efforts to accelerate accession talks.²²

Instead, some «representatives» of civil society assess the state of implementation of the European Commission's requirements very differently from the government officials. For example, on the eve of the February EU-Ukraine summit, a group of NGOs assessed Ukraine's implementation of the Commission's requirements with a total score of «5.8 out of 10». ²³ Moreover, the implementation of certain segments of these requirements from June 2022 is generally assessed as extremely negative. The latter is particularly evident in the situation with the implementation of legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills.²⁴

From a formal perspective, Ukraine already fulfilled most of the European Commission's requirements as early as April 2023. Relevant amendments to the Law of Ukraine «On the Constitutional Court of Ukraine» were adopted in terms of implementing «legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations»; the selection of candidates for the High Qualification Commission of Judges of Ukraine was completed; a new head of the Specialized Anti-Corruption Prosecutor's Office was appointed; and the process of selecting and appointing a new director of National Anti-Corruption Bureau of Ukraine was launched; laws on media and national minorities were adopted, etc. Subsequently, members of the High Qualification Commission of Judges were appointed.

In the meantime, «different interpretations» of the content of the adopted legislative innovations by individual members of civil society, Ukrainian officials, and representatives of the relevant European structures are not always exclusively objective. This is facilitated by the arbitrary «interpretation» by almost all participants in the process of the content of the European Commission's requirements for Ukraine articulated when it was granted the EU candidate status. However, it is the fulfillment of these requirements that has been and remains an important factor in ensuring the irreversibility of Ukraine's European and Euro-Atlantic course.

²⁰ Head of the Specialized Anti-Corruption Prosecutor's Office appointed, <https://www.unian.ua/politics/priznacheno-kerivnika-spezializovanoji-antikorupciynoji-prokuraturi-novini-ukrajina-11919852.html>. (In Ukrainian)

²¹ Ukraine has fulfilled all seven EU recommendations that were identified when it was granted candidate status. March 6, 2023, <https://nv.ua/ukr/world/geopolitics/shmigal-zayaviv-shcho-ukrajina-vikonala-vsi-sim-rekomendacij-yes-ostanni-novini-50308660.html>. (in Ukrainian)

²² Olha Stefanishyna discusses EU accession negotiations and implementation of the European Commission's recommendations with European Ministers. March 3, 2023, <https://www.kmu.gov.ua/en/news/olha-stefanishyna-obhovoryla-z-ministramy-z-ievropeiskykh-sprav-peremovyny-pro-vstup-do-ies-ta-vykonannia-rekomendatsii-ievrokomisii>

²³ Seven steps for Ukraine's EU Future: How does Kyiv implement Brussels' checklist? February 1, 2023, <https://www.eurointegration.com.ua/eng/articles/2023/02/1/7155269/>

²⁴ When will Ukraine join the European Union and what Brussels' requirements are still to be fulfilled? March 17, 2023, <https://www.rbc.ua/rus/news/koli-ukrajina-vstupit-evrosoyuzu-i-ki-vimogi-1678985917.htm> (in Ukrainian).

3. IMPROVING THE CONSTITUTIONAL AND LEGAL MECHANISM FOR ENSURING THE IRREVERSIBILITY OF UKRAINE'S EUROPEAN AND EURO-ATLANTIC COURSE

Mechanism for ensuring the irreversibility of Ukraine's European and Euro-Atlantic course

Ensuring the irreversibility of Ukraine's European and Euro-Atlantic course in our settings is becoming a priority socio-political task for all state and local government bodies and officials. The Constitution of Ukraine defines the President of Ukraine, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine as the main subjects of this process. As noted above, the constitution-makers have entrusted them with determining the principles of domestic and foreign policy for the implementation of the strategic course of the state towards a full membership of Ukraine in the European Union and the North Atlantic Treaty Organization, and ensuring practical support for the implementation of this course and its comprehensive guarantee (clause 5, part 1, Article 85, part 2, Article 103, clause 1/1, Article 116 of the Constitution of Ukraine).

However, since the mechanism of implementation of constitutional provisions as norms of direct action does not always «work» properly in Ukraine, it seems reasonable to **adopt special laws or amend the existing regulations to ensure the practical implementation of the above-mentioned constitutional provisions.**²⁵

For example, to «clarify» the constitutional obligations of the Cabinet, Article 2 of the Law of Ukraine «On the Cabinet of Ministers of Ukraine» (titled «Main Tasks of the Cabinet of Ministers of Ukraine»)²⁶ could be supplemented with para 1⁻¹ reading as follows: *«to ensure the implementation of the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization».*

Instead, part 1 of Article 6 of the Law of Ukraine «On the Cabinet of Ministers of

Ukraine» (titled «Composition of the Cabinet of Ministers of Ukraine and Status of its Members») could be supplemented with words «Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine» reading as follows: *«1. The Cabinet of Ministers of Ukraine comprises the Prime Minister of Ukraine, the First Vice Prime Minister of Ukraine, the Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine, Vice Prime Ministers, and Ministers of Ukraine».*

In turn, part 1 of Article 11 of this Law (titled «Program of Activity of the Cabinet of Ministers of Ukraine») could be supplemented with provisions that would *directly obligate the government to include in its program of activities provisions on ensuring the implementation of the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization in the long and short term.*

Since the constitutional amendments of 2019 add the authority of the Verkhovna Rada of Ukraine to determine the principles of implementing «the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization» (clause 5, part 1, Article 85 of the Constitution of Ukraine), the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine»²⁷ could include the words «shall establish the Committee on European and Euro-Atlantic Integration of Ukraine» in the first sentence of Part 1 of Article 5 (titled «Number, composition and subjects of competence of committees») reading as follows: *«1. The Verkhovna Rada of Ukraine shall establish the Committee on European and Euro-Atlantic Integration of Ukraine, approve the number of other committees, their names, and subjects of competence».*

But in the case of the head of state, who is designated by the constitution-makers as the direct «guarantor of the implementation of the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization» (part 2 of Article 103 of the Constitution), it is expedient to develop and adopt a special

²⁵ For more detail see: Ukraine-EU: The Road to Political Association – Kyiv: Razumkov Center, 2021, pp. 46-47.

²⁶ On the Cabinet of Ministers of Ukraine. Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2014, No. 13, p. 222.

²⁷ On Committees of the Verkhovna Rada of Ukraine. Law of Ukraine, «Vidomosti Verkhovnoyi Rady Ukrayiny», 1995, No. 19, p. 134.

regulatory act, such as, for example, the Law of Ukraine «On Guaranteeing the Implementation by the President of Ukraine of the Strategic Course of the State towards Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organization».

This regulatory act, considering the provisions of relevant international legal documents, in particular, the EU-Ukraine Association Agreement, could set out the basic principles and mechanisms of such guarantees, detail the powers of the head of state and the specifics of his/her cooperation with the parliament, government, courts and law enforcement agencies in this area. At the same time, separate provisions could provide «details» of constitutional requirements for the grounds for removal of the President of Ukraine from office by impeachment in view of the facts of his/her systematic failure to fulfill constitutional duties of guaranteeing the implementation of the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization.

It is obvious that the latter provisions, if adopted, should be «harmonized» with the provisions of the Law of Ukraine «On the Special Procedure for Removal of the President of Ukraine from Office (Impeachment)».²⁸ In addition, it seems appropriate to provide for the mandatory inclusion of information on the status of guaranteeing the implementation by the President of Ukraine of the strategic course of the state towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization in the President's annual address to the parliament (clause 2, part 1, Article 106 of the Constitution of Ukraine).

Expanding the range of actors in the mechanism of ensuring the irreversibility of Ukraine's European and Euro-Atlantic course

Amidst Russia's brutal war against Ukraine, the task of ensuring the irreversibility of Ukraine's European and Euro-Atlantic course should objectively become a priority for all state and local authorities, their officials, and employees. And although the Constitution currently defines

the parliament, the cabinet, and the head of state as the only subjects of this process, other state authorities should find their place here as soon as possible. This primarily concerns those authorities and agencies whose proper functioning directly affects the situation with ensuring the national interests and security of Ukraine by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with the generally recognized principles and norms of international law (Article 18 of the Constitution of Ukraine), in particular, the Constitutional Court of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the National Security and Defense Council, the Ukrainian Parliament Commissioner for Human Rights and others.

First and foremost, the key role in this process should be played by the Constitutional Court of Ukraine – the only body of constitutional jurisdiction in the country, which, having an exclusive right to officially interpret the Constitution, could *clearly «explain» the very purpose/goal of the constitutional future of our state in the European political, economic and security community* through the prism of the interconnection of the above provisions in the preamble regarding «the irreversibility of Ukraine's European and Euro-Atlantic course» (paragraph 5), the provisions of Article 1, according to which «Ukraine is a sovereign and independent, democratic, social, law-based state», and Part 7 of Article 17, according to which «foreign military bases shall not be permitted on the territory of Ukraine».

Moreover, quite useful in ensuring Ukraine's European integration aspirations may be the *official interpretation of the constitutional provisions on the «irreversibility of Ukraine's European and Euro-Atlantic course», as well as its individual components (phrases such as «European course», «Euro-Atlantic course»)* in an inseparable connection with another constitutional category – «European identity of the Ukrainian people» (paragraph 5 of the preamble to the Constitution of Ukraine).

In turn, to ensure proper implementation of Ukraine's European and Euro-Atlantic course

²⁸ On the Special Procedure for Removal of the President of Ukraine from Office (Impeachment). Law of Ukraine, «Vidomosti Verkhovnoyi Rady», 2019, No. 40, p. 212.

as one of the effective guarantees of its national security, it seems that a number of amendments and additions should also be made to certain regulatory acts of the so-called «security group». In particular, Part 1 of Article 2 of the Law of Ukraine «On the Security Service of Ukraine»²⁹ could be supplemented with the provision on «irreversibility of Ukraine's European and Euro-Atlantic course» and reading as follows: *«Article 2. Tasks of the Security Service of Ukraine. The Security Service of Ukraine shall, within the competences determined by the law, be entrusted for the protection of the state sovereignty, constitutional order, territorial integrity, scientific, technical and defense potential of Ukraine, legitimate interests of the state and the rights of citizens against intelligence-subversive activities of foreign special services, encroachments by individual organizations, groups and individuals, as well as for the protection of state secrets and the irreversibility of Ukraine's European and Euro-Atlantic course».*

Part 1 of Article 3 of the Law of Ukraine «On the National Security and Defense Council of Ukraine»³⁰ should be supplemented with a provision on «ensuring the irreversibility of Ukraine's European and Euro-Atlantic course» and reading as follows: *«Article 3: Functions of the National Security and Defense Council of Ukraine. The functions of the National Security and Defense Council of Ukraine are: 1) to submit proposals to the President of Ukraine on the implementation of the principles of domestic and foreign policy in the field of national security and defense, ensuring the irreversibility of Ukraine's European and Euro-Atlantic course».* This would be in harmony with the content of Part 3 of Article 102 of the Constitution of Ukraine.

4. UKRAINE'S INSTITUTIONAL DEVELOPMENT AND IRREVERSIBILITY OF ITS EUROPEAN AND EURO-ATLANTIC COURSE

Launched during the European revolutions of the 17th and 18th centuries, «constitutional development» as a kind of general social advancement continues now despite all

obstacles and new challenges, gradually absorbing new territories and political and legal environments sometimes not quite used to European culture. However, for the European nations, this «constitutional development» has become not only a «natural state» (one that stems from the essence of the European mentality, its ancient past, Christian moral values, centuries-long struggle for freedom of nations and peoples and for human rights), but also perhaps the only possible option for preserving the European identity and ensuring the well-being and democratic future of the European nations as such.

The latter is evidenced by the history of post-WWII Europe with its unbelievable reconstruction of destroyed economies, creation of a collective security system, and development of a common «European home» (the European Union). After all, recent events in Europe have also confirmed the above statement, when the peoples of the Old World, united by European constitutional values, are trying to jointly overcome new challenges and threats, including mass migrations and multimillion refugee flows, the Covid-19 pandemic, the intensified international terrorism, a full-scale war in its eastern territories brutally unleashed by Russia.

Like any other European state, Ukraine, despite its rather complicated history of national statehood, has its own long experience of constitutional development.³¹ Particularly vivid was the period of national liberation struggle of 1917-1920 and the emergence of two modern constitutional states of that time – the Ukrainian People's Republic (UNR, 1917) and the Western Ukrainian People's Republic (ZUNR, 1918), which later voluntarily united into a single national constitutional state (1919). Carpathian Ukraine (1939) also left its mark on the history of Ukraine's constitutional development.

The newest period of «constitutional development» began with the restoration of state independence of the Ukrainian people after the Soviet Union disappeared from the map of the world.³² The documents of the so-called transitional period, namely the

²⁹ On the Security Service of Ukraine. Law of Ukraine. <https://zakon.rada.gov.ua/laws/show/2229-12#Text>

³⁰ On the National Security and Defense Council of Ukraine. Law of Ukraine. <https://zakon.rada.gov.ua/laws/show/183/98#Text>

³¹ For more detail see P. Stetsiuk P. Constitutional Development in the Modern World: Ukrainian Dimension. Ukrainian Journal of Constitutional Law, 2017, No. 1, pp. 59-57.

³² For more detail, see: Anthology of Constitutional Development in Modern Ukraine, Razumkov Center, ed. V. Musiyaka. – Kyiv: Zapovit Publishing House, 2017. P.15-64.

Declaration of State Sovereignty of Ukraine and the Concept of the New Constitution of Ukraine (June 16, 1991),³³ were of great importance for overall constitutional transformations in post-Soviet Ukraine. Adopted on June 28, 1996, the Constitution of Ukraine proclaimed our state sovereign, democratic, social, and law-based (Article 1), and the human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value (Part 1, Article 3).

Analyzing the course of the state-building process in Ukraine in recent decades, one can reasonably argue that the implementation of Ukraine's European and Euro-Atlantic course, as enshrined in the law «On Amendments to the Constitution of Ukraine (concerning the strategic course of the state towards full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization)» is probably the third most important event in Ukraine's constitutional development after the proclamation of the Act of Independence of Ukraine and the adoption of the current Constitution of Ukraine.

After all, the realization of Ukraine's Euro-Atlantic choice after Russia's brutal military attack on Ukraine in February 2022 has objectively become a true guarantee not only for preserving the country's sovereignty and territorial integrity, but also for securing the physical existence of the Ukrainian people as such. The full implementation of Ukraine's European course and the ensuing EU membership will be a logical and socially justified consequence of the country's constitutional development at the present stage. Such a course of events will be fully consistent with the constitutionally programmed process of Ukraine's further development as a democratic, social, and law-based state, in which they establish the rule of law, protect human rights and freedoms, support the development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples

and national minorities, and ensure all other basic values of modern European constitutionalism.

At the same time, achieving the primary goals in the process of Ukraine's European and Euro-Atlantic course, that is, Ukraine's full membership in the EU and NATO, will objectively raise the question of a significant «constitutional renewal» of the Ukrainian state. The realization of the fact that the *current Constitution, even before the onset of the Russia-Ukraine war, actually fulfilled its historical mission by constitutionalizing the restoration of state independence of the Ukrainian people and creating the legal basis for the transformation of «post-Soviet» Ukraine into a modern constitutional state*, will also contribute to this renewal.

Moreover, the current Basic Law over the decades of its functioning not only failed to get rid of its so-called «congenital flaws and shortcomings» but also acquired some new ones. In many respects, the Constitution of Ukraine was also «unprepared» for proper functioning under martial law and in other situations related to new challenges and threats of the 21st century.

That is why, after the war and, especially after Ukraine's full membership in the EU and NATO, the development and adoption of a new constitution is highly likely in the country.

This post-war Constitution of Ukraine is seen primarily as a legal document of the future (the constitution of the 21st century), which is set to become the basic law for sustainable development of the state, the constitution for real assurance of the rights and freedoms of every person in Ukraine, the main and most important national political and legal document, and also an expression of the hope of the entire Ukrainian people for decent political and socio-economic future in a united Europe.

³³ Concept of the new Constitution of Ukraine. Resolution of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic. «Vidomosti Verkhovnoyi Rady Ukrainskoyi SSR», 1991, No. 35, p. 466.