

THE BASIC LAW OF THE STATE: LEGAL AND POLITICAL CONTENT

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Abstract. The scientific publication is devoted to highlighting the peculiarities of the legal nature of the constitution. The authors consider the structure and content of the constitution of the state in the context of its functions. The specificity of the content of the newest constitutions in the history of world constitutionalism is considered. The correlation between the constitution and the state policy is established. Modern approaches to understanding the nature of the constitution are considered. The legal nature of the Constitution of Ukraine is determined. Proven, the main and still unresolved issue is the ambiguity of what is proposed to adopt: a new Constitution, a new version of the current Constitution, amendments and additions to the current Constitution. Although paradoxical, in Presidential speeches, these terms are used repeatedly as synonyms. However, legally they are completely different concepts. This terminological confusion carries a great danger of loss of landmarks and prevents a clear statement of the problem in a purely legal area. We believe that the constitutional process is too politicized today. In our opinion, the acutest political struggle is underway for adopting a form of constitution that is convenient for one of the parties. But in fact – for power – everyone wants a maximum of power. Including through their Constitution enforced in some way. However, the Basic Law should be adopted not from the conjuncture considerations of political expediency but be a complete legal document, taking into account the achievements of the world jurisprudence, with the strict observance of all the prescribed legal procedures. After all, the constitution should be the main document of the state, at least for a decade.

Key words: legal content, constitution, basic law, legal status, legal nature, nature of constitution.

JEL Classification: K10, K15, K39

1. Introduction

Constitutionalism as a politico-legal category and doctrinal learning appears after the emergence and establishment of the constitution of the state in the modern sense of this term. It is inseparable and directly derived from the constitution of the state. Although not always the fact of the existence of a constitution automatically means the emergence of a particular model of constitutionalism. However, without the appearance (availability) of the constitution itself (in the broad sense of this notion), there is no need to talk about constitutionalism. The substantive basis, the very essence of constitutionalism, according to V. Shapoval, is expressed by the formula: “constitutional-legal norm + practice of its implementation” (Shapoval, 1997). Therefore, a bit strange, in our opinion, when in certain writings, including monographs, there are such statements as “ancient”, “medieval”, “totalitarian” or “Soviet constitutionalism”, since at that time the

constitution as such (in the modern understanding of this concept) simply did not exist. However, it was precisely in previous times that, in fact, the foundations of the future phenomenon – constitutionalism – were laid (Stecjuk, 2004).

However, the notion of a constitution cannot be disclosed to the full extent without clarifying the question about not only its legal but also socio-political nature.

2. The constitution of the state in the context of its functions

According to M. Savchyn, the supremacy of the constitution must be supported by certain institutional and procedural guarantees. Only in their totality, they determine the nature of the constitution. Institutional and procedural guarantees define certain criteria for the quality of legislation, administrative and judicial practice. Thus,

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the nature of the constitution and constitutional order are conditioned by the problem of statics and the dynamics of constitutional matter. The definition of the nature of the constitution is also influenced by the social environment since real constitutional relationships are determined by a certain type of society, civilization in general. The nature of the constitution is influenced by the legal tradition, which is based on the paradigm of constitutionalism, constitutional consciousness and culture, national traditions of government, the system of social values. A diversity of approaches to defining the nature of the constitution determines how these components are combined in the process of drafting the constitution and building a constitutional order (Savchyn, 2009).

The Constitution fulfils the function of legitimizing public order. Therefore, in the form of constitutional principles, democratic access to positions is determined through democratic elections and fundamental principles of separation of powers, as well as the limitation of power, which are carried out mainly through legal guarantees of human rights and freedoms (Cippelius, 2000). From the institutional point of view, the constitution is embodied in ensuring the consolidation of democracy, representation of the people through free and periodic elections, parliamentary regime, and judicial constitutional control.

In the normative sense, the constitution includes both the provisions that contain specific regulations, as well as the provisions that determine the general legal principles of intervention in private life. Accordingly, the constitution has both a vertical and a horizontal structure. The vertical structure of the constitution relates to its requirements, horizontal one defines a set of principles of law (provisions-principles), which operates both in the sphere of public and private law. Thus, the constitution in the normative sense extends to the sphere of public and private law (Savchyn, 2009).

In its content, the constitution expresses: a) a public consensus on social values provided by legal protection; b) ways of implementing democratic procedures and control of the people over the public authority; c) legitimation of public authority; d) limits of interference of public authority in the private autonomy of a person; e) legal mechanism of international cooperation of the state. Thus, the constitution in its content is a certain type of social order that is based on the definition of the legitimate framework of government to ensure the public good (balance of public and private interests).

In the formally-legal sense, the constitution is understood as the Basic Law, which has a constitutive character and has the rule of law. One should agree with M. Savchyn that, as a normative legal act, the Constitution of Ukraine has the following properties (Ibidem):

a) constitutive nature – the constitution is an act of the constituent power; hence the constitution cannot be considered as a result of the legislative process of the parliament, which is actually established by the constitution and bound by its requirements;

b) the main law – the constitution is the core of the legal system, laws and regulations are developed and adopted on its basis, it lays the program, the general direction of law-making work in the state, consolidates the system of sources of national law;

c) the highest legal force – any other normative act cannot distort the content of the constitution, it creates such an order when justice and law should not diverge. The Constitution of Ukraine has the highest position among rules and regulations, which should not contradict it but conform to its basic principles and spirit;

d) the horizontal effect – the constitution equally is the basis for the rules of public and private law; such a normative influence of the constitution on the legal system of the country is realized through the specification of constitutional principles and human rights and freedoms at the level of current legislation and constitutional jurisprudence;

e) the supremacy of the Constitution regarding international treaties submitted to the parliament for the ratification procedure; this provision also applies to international treaties, duly ratified by the Parliament;

f) direct action of constitutional norms means the duty of state authorities and local self-government bodies, their officials to apply directly provisions of the Constitution in the presence of gaps in law or in the event of a conflict between constitutional provisions and provisions of law; if it is impossible to eliminate such a contradiction during the course of law enforcement, then such a conflict is finally resolved by the Constitutional Court of Ukraine;

g) special procedure for adoption – the constitution in the modern sense of this concept is an act that is usually adopted by the people or on behalf of the people. Characteristically, the emergence in the XVII century of the very idea of the need for such an act as a constitution was associated precisely with this feature.

The demand imposed by the bourgeoisie to restrict the rights of the king and feudal lords to protect their liberties could only be secured through the adoption of an act of supreme authority that embodies the will of the entire nation, of all the people. Thus in an unrealizable in practice “People’s Agreement” project of Cromwell in 1653, the condition for signing it by all the people was provided. The same requirement was put forward later by J. Russo. He believed that the constitution requires the consent of all citizens. It should be the result of a unanimous decision, signed by all citizens, and opponents of the constitution should be considered foreigners among citizens.

3. The latest constitutions in the history of the world constitutionalism

V. Shapoval argues that it is possible to identify common features by the content of the newest constitutions. Firstly, they reflect the relatively large

role of the state in the economic sphere; consolidate economic function of the state. Secondly, according to the content of the relevant basic laws, the person has been recognized as a priority in its relations with the state. The latest constitutions, of course, contain meaningful provisions on rights and freedoms and fix a number of socio-economic rights. At the same time, quite wide guarantees of the enforcement of rights and freedoms are established and new mechanisms for their protection (ombudsman, constitutional complaint, etc.) are created. Thirdly, the newest major laws to a greater extent represent provisions of social orientation, although their meaning and purpose are different. Fourthly, relations that arise within the political system of society outside the state organization became the subject of constitutional regulation. This primarily concerns the activities of political parties in their interactions with the state mechanism. Finally, fifthly, the sign of the newest constitutions is the presence in their texts of the provisions on foreign political activities of the state and the relation of national and international law (Shapoval, 2008).

Characteristic features of the newest constitutions in one way or another characterize also the basic laws adopted in the post-socialist and post-Soviet countries in the 90s years of the last century. It is they that are sometimes distinguished as the constitutions of the fourth "wave" since they were introduced and operate in other socio-political conditions than the constitutions of the third "wave". The current Basic Law of Ukraine also belongs to the constitutions of the fourth "wave" (Todyka, 2000).

In the main laws of the fourth wave, the importance of human rights and their guarantees for the society and the state is often emphasized to a greater extent. Almost all of them define the state as legal and social, state political, economic, and ideological pluralism, fix certain provisions of the natural-legal content. Concerning the construction of the state mechanism for the authors of the main laws adopted in the post-socialist and post-Soviet countries, in most cases, the French Constitution of 1958, which began the practice of a mixed republican form of government, served as a model (Shapoval, 2008).

The history of world constitutionalism involves the classification of constitutions as instrumental and social. Instrumental constitutions are defined as those whose content is primarily focused on establishing the status of key parts of the state machinery. Provisions on the status of the individual play a minor role in these constitutions and the question of social being is generally outside the scope of their regulation. In contrast to the instrumental constitutions, some provisions of social basic laws are addressed to society; in particular, they confirm social and economic rights (Prieshkina, 2009).

According to V. Shapoval, the socialization of the newest constitutions should be distinguished from

"sociologization" of the Soviet constitutions, which were considered the basic laws of society. The texts of these constitutions were filled with non-legal abstractions, filled with the terminology, which today relates primarily to political science. Recognition of Soviet constitutions by the basic laws of society and their "sociologization" were not accidental. In the period of existence of the Soviet organization of power, there was a desire for the mythologization of social life. In such circumstances, the constitution was considered primarily as one of the tools of ideological influence on the internal and foreign policy environment. Moreover, the ideological function attributed to it, which, as a rule, was set at a level or even above the legal function.

It is known that any constitution plays a significant socio-regulatory function, and it is in this sense that it can be perceived as the basic law of society. However, even the most socialized constitutions are primarily the main laws of the state. Those positions that are outwardly addressed to the public are formulated in a general form, have a fragmentary appearance and, in the end, usually reflect the interaction between society and the state. Determination of the constitution as the basic law of the state does not mean the substitution of society by the state, the nationalization of social life. Such a definition testifies to the nature of civil society as such, where society and each individual are protected from the full interference of the state, and the latter is an integral part of the political system of society and does not absorb all its essential manifestations (Koliushko, Kirichenko, 2001).

The constitution as the basic law of the state does not create the state but only establishes the foundations of its organization. In this regard, it plays a creative role in the state mechanism, first of all, its most important links – the supreme bodies of the state. The political task of the constitution is to establish the sovereignty of the state, to consolidate the establishment or change of the state system, to ascertain the degree of continuity in the development of the state. No less important is that the constitution as the basic law of the state determines the principles in the field of relations between the state and the person. According to the historically formulated definition based on ideas of natural law, the constitution is a certain system of restrictions of state power in the form of appropriately established rights and freedoms, as well as legal guarantees for their implementation (Shapoval, 2008).

4. Constitution and state policy

Today, one of the reasons for the constant tension in relations between the supreme bodies of state power in Ukraine is the imperfection of the Basic Law, the different interpretation of its norms, as well as the fundamental change of the state policy, especially after the 2004–2005 presidential elections.

The constitution has a mixed political and legal nature, as well as to a large extent all constitutional law. Constitutional relations that arise based on its provisions can also be characterized as having a dual nature: political and legal at the same time. Powerful relations subject to constitutional regulation create prerequisites for the appearance of political issues in constitutional law and politicize it to a certain extent. The political and legal in the constitution are closely intertwined, as well as the implementation of constitutional provisions can have a legal and political dimension.

As A. Heywood has rightly pointed out, for the vast majority of democratic states, constitutions were traditionally perceived as “precise descriptions of the current system of government” (Khejvud, 2005). Consequently, any constitution always carries a certain prognostic-axiological element, which allows foreseeing a further direction of the state development and, accordingly, state policy. It is important to note that the prognostic function of the Constitution is directly written by well-known domestic researcher Yu. Todyka (Todyka, 2000). However, we now mean not only one of the possible functions of the constitution but also the fact that at its level the values are laid down that the state is called to provide.

The authors of the monograph “Politics, Law and Power in the Context of Transformation Processes in Ukraine” characterize state policy as a “system of purposeful measures aimed at solving certain social problems, meeting public interests, ensuring the stability of the constitutional, economic, legal system of the country [...] the specificity of which is that it is realized through the power structures that have the authority of the monopoly right of the state to lawful coercion” (Kresina, 2006). Indeed, the link between the state policy and the constitution is shown by not only the reference to such a concept as “constitutional system”. From the outset, the authors of the above-mentioned study establish a clear correlation between the direction of state policy and the process of ensuring social stability and satisfaction of the public interest. It should be borne in mind: the main social interests are always connected with the system of rights and freedoms of citizens of the state, which are not only formally fixed in the Constitution but must also be secured by it as a legal act of the highest legal force, which has a sign of direct imperative action (Article 8 of the Constitution of Ukraine) (Gladunjak, 2007).

The same can be said for a widely used in the modern Ukrainian science definition of the state policy by V. Tertychka. This author proposes to interpret the state policy in the following way: “relatively stable, organized, and purposeful activity/inactivity of state institutions, carried out by them directly or indirectly on a particular problem or a set of problems that affects the life of society” (Kresina, 2006). Moreover, justifying the appropriateness of this way of understanding the

phenomenon of state policy, he notes that the definition of state policy implicitly implies that it is based on the law and must be legitimate. That is, state policy does not appear, so to speak, solely on its own accord and on own will of those who are currently endowed with state power. On the contrary, in order that this direction of the state’s activity should be systematic and coherent, it is necessary from the very beginning to have a certain set of rules and principles that would indicate: a) the type of political regime; b) the way of organizing state power; c) the main political institutions, the presence of which ensures the normal development of the state mechanism; d) the basic values and tasks that must be implemented during state and social development.

These rules should be fixed at the legislative level so that there are no ambiguous political interpretations of the way, in which policy should be implemented and on what grounds (Gladunjak, 2007). The universal method of fixing these rules and regulations is the method of constitutional determination. By giving these rules and principles an imperative value, the state acts as the guarantor of the fact that all participants in social and political relations will adhere to them. At the same time, it, as a mechanism of institutionalized coercion, will act under certain standards. Therefore, it is quite natural that in all democratically-operated countries, programs for the realization of state policy are always developed and implemented in accordance with the constitution.

However, it is necessary to distinguish between the constitution as a legal act and the functions specific to it in the legal field and the constitution as a political document having a certain socio-political content that directly or indirectly affects the entire political system of the country (Ibidem).

Consequently, the relationship between the constitution and politics manifests itself in two main areas. First, in a broad sense, political relations are one of the most important constituent parts of constitutional regulation. Constitutional norms set legal boundaries for the political process. They consolidate the foundations of the political system of society, and not only. In modern constitutions, the foundations of the social and spiritual systems of society, which affects the expansion of the object of constitutional regulation at the turn of XX–XXI centuries, are increasingly reflected. As rightly V. Chyrkin notes, “constitutional law went beyond a largely formalized approach of the XVIII–XIX centuries and spread to the settlement of issues of the social system, the situation of one or another stratum, groups of the population (social, national, age, etc.), socio-economic rights” (Chyrkin, 1999).

Secondly, the constitution itself embodies a certain policy of the state, the desire of the project developers to consolidate certain principles and political values. Even K. Marx argued that “all legal has in its essence a political nature” (Marks, Engels, 1991). This thesis on the Basic Law, according to V. Luchyn, becomes of a special

significance. The political orientation of the constitution is one of the most important qualities that determine its special role in the legal system, a special social role in society. However, the idea that a constitution is created by the state to achieve a certain political goal requires some adjustments (Luchin, 1997).

From the standpoint of democratic constitutionalism and the theory of social contract, both the institutions of public authority and the electoral body participate in the act of constitution creation in one way or another. Therefore, official representatives of the state – only one of the subjects of the constitution creation. The constitution should integrate not only state goals of development but also the idea of society about the goals of social progress, to be an indicator of the needs of different social groups, the expression of their expectations and hopes (Gladunjak, 2007).

Interesting is the characteristic of the Constitution of the RSFSR of 1918, given by the well-known Soviet legal ideologist of the 20s P. Stuchka to the twelfth anniversary of the revolution of the state and law. He called it “the civil war constitution”, which is largely justified since it openly supported class positions on the issue of the acquisition and implementation of basic civil and political rights and freedoms (Stuchka, 1929). Later in the process of the constitutional development of the Soviet state, constitutional right gradually cleared itself from the ability to act as a tool of class domination, acquiring the nature of a universal legal regulator (Gladunjak, 2007).

In the mid-80s, political scientist I. Stepanov, reflecting on the relationship between the constitution and politics, expressed the view that politics and law should be represented in the constitution in an organically integral form, “balanced in a coherent unity” (Stepanov, 1984). Of course, during the Soviet period, the study of the constitutional policy was limited by many party-ideological barriers. However, the search for an optimal combination of politics and law in the constitution, constitutional policy, and political law is an important and constantly restored process of democratic development.

On the one hand, the tradition of observing constitutional limitations by subjects of political activity and political relations should be developed. On the other hand, constitutional law should not be disconnected from political issues, and constitutionalists should seek to see political aspects in the implementation of constitutional norms. The study of political issues in constitutional law can shed light on the motives for adopting the constitution as a whole or individual constitutional changes, it can serve as an explanation or justification for the constitutionally regulated actions of state bodies and officials. In general, political issues highlight the controversial and problem areas of constitutional and legal development, contribute to the formation of a constitutional paradigm within the

legally established normative framework of relations of person, society, and state (Kravec, 2003).

In the political sphere, functions of the constitution are inextricably linked with its nature. In many respects, its effectiveness in the field of politics depends on the nature of the constitution. After all, the nature of the constitution is its socio-political content. In the national political science, in the Soviet era, the class nature of the constitution and its content were distinguished. Under class nature, they understood the basic socio-political characteristics of the constitution. It finds its manifestation in its content, principles, properties, and functions, has a decisive influence on its form, defining its fundamental features. The content of the constitution is the specification of its class nature. Moreover, the content may vary within a specific nature under the influence of a number of objective and subjective factors. The constitution had a dual meaning – social and legal (Yudin, 1987). The point is that this approach was based on a formative theory, according to which the specifics of the nature of the constitution in different countries were tied to a certain socio-economic formation. Throughout the development of Soviet constitutions, even in the late period, known as “developed socialism”, dominated the class concept of the nature of the constitution, which was determined by the class (classes) it serves and which type of property it establishes (Farberov, 1979).

In our opinion, the nature of the constitution derives from its socio-political content, so to speak, in a concentrated form. The legal content of the constitution is determined by the objects of constitutional regulation, in other words, what legal institutes, principles, and provisions are reflected in the text of the constitution and in this regard acquire the constitutional status. Given the differences in the legal and socio-political content of the constitution, it is necessary to identify the key elements of its nature, which have a political influence on the functioning of constitutional provisions.

These elements can be formulated in the form of theoretical postulates, the answers to which give a general idea of the nature of a specific constitution. These include:

- 1) the will of which political forces found consolidation in constitutional provisions (whose political will was enshrined in the constitution?);
- 2) the interests of which social strata are reflected in the constitutional provisions and supported by them (whose interests are reflected and supported by the constitution?);
- 3) what is the degree of legitimacy of the constitution, which is largely determined by the terms of its project development and the procedure for its adoption (how the chosen procedure for the development and adoption of the constitution influenced the degree of its legitimacy?).

5. The legal nature of the Constitution of Ukraine

In the Ukrainian society, which is at the stage of modernization of its political, legal, and economic systems, the attitude to the Constitution is a private aspect of the social outlook split by the differentiation of social strata. This attitude reflects the process of a new stratification of the changing society. Constitutional development of Ukraine in the XX century was accompanied by several fundamental changes in the civilizational foundations of the existence of society and the state. Existing constitutions reflected in a different way the balance of political forces and had unequal socio-political content (Bielov, 2010).

The Constitution of 1919 reflected and embodied the political development of revolutionary authoritarianism. Its essence lies in the fact that, in general, it is based on a broad democratic basis, in contrast to the census monarchical constitutions of the XIX – the beginning of the XX century. The logic of revolutionary authoritarianism came from the principle of *Salus populi suprema lex est* (from Latin “The good of the people should be the supreme law”).

The constitution consolidated the new political reality of the union of workers and peasants for the growth of the people's good. V. Lenin stressed that the Soviet constitution is not invented by any commission, not written off from other constitutions, not drawn up in the offices, but developed based on the experience of the struggle of the working people and the organization of proletarian masses (Lenin, 1980). However, the concern for the people's good was given to the revolutionary avant-garde – the Communist Party, whose representatives, combining party and state posts, used authoritarian methods of domination. The class approach to the constitution served as a justification for the use of violence against social strata that did not share the goal of a revolutionary transition to a socialist society (Bielov, 2010).

The logic of revolutionary authoritarianism, as A. Galkin and Yu. Krasin rightly noted, had deep internal contradictions (Galkin, Krasin, 1995). The fact is that people consist of individuals and social groups that have different interests, hopes, convictions. The constitution can integrate and allow co-existence of all these social strata only with the relatively free regulation of the legal and political space. Otherwise, the authoritarian power of the revolutionaries, pretending to be the role of the speaker of the will of the people and the common good, inevitably evolves until the domination of the political minority, which imposes their will on all the citizens.

Consequently, the Constitution of 1919 performed not the function of a limitation of state power, in contrast to the liberal constitutions of the late XVIII century, but the function of justification of political power, not limited by law and justice, such as based on revolutionary legitimacy and expediency (Bielov, 2010).

The political significance of proletariat dictatorship has survived in subsequent constitutions adopted after the formation of the USSR. The provisions on the dictatorship of the proletariat existed in the Constitutions of the USSR of 1929 and 1937. In the process of political evolution, the social basis of the proletariat dictatorship gradually expanded. First, the social strata that emerge as a result of the freedom of economic activity, which was prohibited in the Soviet state, were eliminated. Secondly, through the system of local councils, ordinary people were involved in the state control under the political control of the ruling party of the Bolsheviks. Thirdly, the social policy of the Soviet state contributed to the growth of the welfare of Soviet citizens, although the Communist Party remained the main interpreter of what was considered as “common good”. One can agree that the dictatorship of the proletariat was “intended to enlighten the masses, drawing them into the practical work of building a new society, and then giving way to a people's power” (Lukjanova, 2001). The strategic goal of transforming the dictatorship of the proletariat into a regime of democracy has influenced the development of the concept of the self-government of the working people, which envisaged a widespread replacement of forms of government by forms of public self-government.

After the death of J. Stalin and the condemnation of a person's cult during the reign of M. Khrushchev, the doctrine of a nation-state that was embodied in the norms of the Constitution of 1978 began to form. This doctrine included several elements that reflected both the continuity with the former doctrine of the dictatorship of the proletariat and the novelty of understanding the social activity of the state and tasks of political development.

The doctrine of the state of the whole people was intended to show the destruction of class contradictions within the Soviet society, which was based, as argued by the official ideology, on the alliance of workers, peasants, and intellectuals. A political alliance of two classes and a stratum (the intelligentsia, in the Marxist sense, could not be a class by definition) testified that the Soviet constitution had reached its highest level of development and had the widest possible social base. The absence of social strata capable of expressing disagreement or opposing the constitution created the appearance of general agreement and political approval of the social and legal order.

Expansion of political participation of Soviet citizens through the system of councils was accompanied by the preservation of political monism of the party – the state. Some weakening of the principle of political monism consisted in the fact that non-party citizens began to be admitted to public positions, and in the elections, with the preservation of non-alternative voting, a single bloc of “communists and non-parties” was to be nominated.

The constitution of the state of the whole people preserved traditionally the Soviet approach to the ratio of collective and individual. It was mostly collectivist

in nature and set the interests of the state and society above the interests of the individual (Selivanov). The constitutional civil and political rights and freedoms, broadly enshrined in the constitutional text, did not have a detailed mechanism of guarantees both at the legislative level and at the level of judicial protection.

After August 1991, the collapse of the USSR was inevitable, leading to the cessation of the 1977 Constitution of the USSR, with changes and additions. Granting the status of a sovereign state to Ukraine has transformed the Constitution of the Ukrainian SSR in 1978 with amendments and additions from the constitution of one of the Union republics to the Basic Law of an independent state. This Constitution continued to operate in the transitional period from 1990 to 1996 with changes in the political struggle of reform forces and forces that sought to revive the Soviet political system. Adopted for a monolithic society in the conditions of the political hegemony of the ruling party, this constitution was not clearly adapted to appease political conflicts by legal means. The changes reflected the multidisciplinary aspirations of various political forces. The Constitution failed to put an end to the confrontation between the legislative and executive powers, unable to withstand a change in the balance of political forces and rising socio-political tension.

The 1996 Constitution of Ukraine has a fundamentally different nature, related to new socio-political realities. The nature of the 1996 Constitution was largely determined by the political events that took place during its elaboration and on the eve of its adoption. However, the transformations that took place after 1996 in various fields of social and public life, a certain period of validity of constitutional norms indicate a gradual change of socio-political content of the Constitution of Ukraine (Ibidem).

That is why today the constitutional process in Ukraine is gaining momentum and, at the same speed, concerns grow in circles of lawyers about the consequences of the adoption of the Basic Law. On the one hand, everyone understands that the Constitution of 1996 initially contained in its text a lot of inaccuracies, contradictions,

insubordination, and references to laws that have not yet been adopted, and their fate is covered with the darkness of ignorance. This was accompanied by changes adopted under the influence of the political moment at the end of 2004. On the other hand, there is an extremely dangerous tendency to politicize the process of drafting and adopting the Constitution. Instead of lawyers and legal scholars, politicians and political consultants try to deal with this matter. As a result, there is a deadlock situation. The current Constitution does not quite satisfy the society, and this is bad, but another option may be even worse. In fact, the ongoing political struggle, which is barely covered by legal clothing, takes place against the backdrop of too low informing the society about its essence and the problems of the constitutional process.

6. Conclusions

Consequently, the main and still unresolved issue is the ambiguity of what is proposed to adopt: a new Constitution, a new version of the current Constitution, amendments and additions to the current Constitution. Although paradoxical, in Presidential speeches, these terms are used repeatedly as synonyms. However, legally they are completely different concepts. This terminological confusion carries a great danger of loss of landmarks and prevents a clear statement of the problem in a purely legal area.

Thus, we believe that the constitutional process is too politicized today. In our opinion, the acutest political struggle is underway for adopting a form of constitution that is convenient for one of the parties. But in fact – for power – everyone wants a maximum of power. Including through their Constitution enforced in some way. However, the Basic Law should be adopted not from the conjuncture considerations of political expediency but be a complete legal document, taking into account the achievements of the world jurisprudence, with the strict observance of all the prescribed legal procedures. After all, the constitution should be the main document of the state, at least for a decade.

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