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## **The political reasons for the constitutional changes in Ukraine and the Republic of Poland**

STUDIA I ANALIZY

**Keywords:** *policy, politics, political reasons, constitution, form of government, political expediency*

**Abstract:** *In the article it is noted that since the introduction of the Basic Law in Ukraine (23 years) eight changes have been made, while in Poland (22 years) – two changes have been made. The article focuses on the reasons for amending the Constitution of Ukraine, which are related to the redistribution of powers (2004, 2010 and 2014). The author emphasizes that the reasons for constitutional change must be connected with public policy based on the public interest and not with politics as a struggle for power.*

The numerous changes made to the Constitution of Ukraine; an increase in the number of proposals for regular changes, and the justification of the need for a new wording of the Basic Law has resulted in a debate on the causes for these constitutional changes, with the most frequently mentioned reasons being political ones. In many publications, political causes are usually associated with the underlying interests of political forces, which are not based on public needs, but only on the desire to obtain the most power. In public discourse, and even in academic literature, one can find that political causes lead to a violation of law, and therefore should not dominate the process.

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In order to study this issue in more depth, we will use a case study: the experience of another country, the Republic of Poland. This country, like Ukraine, has embarked on a democratic path since regaining its independence in the late 1980's. The basic laws were adopted at about the same time: the Constitution of Ukraine in 1996 and the Constitution of the Republic of Poland in 1997.

The goals of this study are: to understand the category of 'political'; to analyse the amendments made to the Constitution of Ukraine and to the Constitution of the Republic of Poland and their main reasons; to disclose the essence of the political reasons for amending of the basic law. The hypothesis of this study is the statement that amending the constitution for political reasons are often for subjective or non-legal reasons and they may have other than positive results.

The adjective 'political' means: one that is "based on policy, related to policy, policy issues, policy implementation", "concerning the issues of state structure, government activities, parties and relations between states". From these definitions it follows that the criterion by which a phenomenon can be called political has a close connection with policy and politics. However, policy and politics are extremely multidimensional phenomena, for which there are hundreds of different definitions. Some focus on values, while others – on process, form, purpose, functions, certain activity and more. For example, policy is defined as the art of managing public affairs, reconciling diverse interests in society; politics – as struggle for power and more. While there are several terms used in the English language, there is one term in the Ukrainian and Polish languages to refer to these multifaceted phenomena – політика (ukr.) and polityka (pol.).

H. Colebatch notes that political rivalry, the struggle for attracting supporters (political activity) is denoted by the term 'politics', and the constant balanced choice of the direction of actions in the management of society (strategy) – 'policy' ('public policy')<sup>1</sup>. The inalienable attributes of policy are authorities, expert knowledge and order. In practice, politics and policy do not have a clear dividing line and are often combined within the same processes.

The desire of a particular political force to receive as much support in society as possible and therefore to maximize its power may hypothetically imply its desire to implement a well-designed program of social development, based on the public interests and strength of the state. We will examine which of the aspects of policy or politics are important for deciding whether to amend the basic laws in Ukraine and Poland.

As of December 31, 2019, the Constitution of Ukraine has been amended eight times. The changes of December 8, 2004 mostly concerned the form of

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<sup>1</sup> Г.К. Колбеч, *Політика: основні концепції в суспільних науках*, О. Дем'янчук (trans. from English), Kyiv 2004, p. 25, 82.

the government; September 30, 2010 (Decision of the Constitutional Court of Ukraine) – also the form of the government; February 1, 2011 – the terms of office for village, settlement, city, district, oblast councils, Verkhovna Rada of Ukraine; September 19, 2013 – the powers of the Accounting Chamber; February 21, 2014 – again the form of the government; June 2, 2016 – the prosecutor’s office, justice, Constitutional Court of Ukraine; February 7, 2019 – the strategic course of the state; September 3, 2019 – the inviolability of the People’s Deputies of Ukraine.

From the above-mentioned changes, we will make a more detailed consideration of those that are related to politics. These are the changes in the form of the government that took place in 2004, 2010 and 2014. The first amendments to the Constitution of Ukraine were made eight years after its adoption. The reasons for these changes are termed political, is first of all, because of the conditions and the way they were adopted.

The main driver of the development and adoption of these changes was the 2004 presidential election. The advisors of the current President of Ukraine at that time L. Kuchma, anticipating that their candidate V. Yanukovich could lose the election to the opposition candidate V. Yushchenko, prepared changes that reduced the scope of presidential authority. When after the second round of the presidential election, where due to numerous violations and fraud, the pro-presidential candidate V. Yanukovich ostensibly won, there were large scale protests against the victory of V. Yushchenko in particular, and in general against the political situation. These events have become to be known as the Orange Revolution.

Since the current legislation did not provide ways to overcome this situation, the resolution required lengthy negotiations between the parties to the conflict before a political compromise could be reached. The political forces that supported V. Yanukovich agreed to a re-vote, the so-called ‘third round of the presidential election’ in exchange for amending the Constitution of Ukraine on the redistribution of powers between state authorities. Under these conditions, the Law of Ukraine “On Amendments to the Constitution of Ukraine” No. 2222–IV of December 8, 2004 appeared.

Changes were made to 15 articles, most of which were in the section, Verkhovna Rada of Ukraine. The Parliament was given more powers, which led to a change in the form of government from presidential-parliamentary to parliamentary-presidential. Among other things, the concept of a ‘coalition of deputy factions’ was introduced into the Basic Law, and the electoral system was changed from mixed to proportional.

The statement that the causes of the first constitutional changes were political is based on the following characteristics: the law, “embodied numerous political arrangements and compromises between the current ‘old’ and ‘new’ political

elites”<sup>2</sup>, “amendments to the Constitution of Ukraine were already used as an instrument of political struggle”<sup>3</sup>, “constitutional changes emerged as the result of numerous political compromises, for which the observance of the rule of law, legal technique and procedure for amending the Constitution of Ukraine were not essential”<sup>4</sup>.

Ukrainian and foreign experts noted the violations in the adoption of the law by which amendments to the Constitution of Ukraine were made. In particular, it was stated by the National Commission for the Strengthening of Democracy and the Rule of Law, the European Commission for Democracy through Law (Venice Commission), the Parliamentary Assembly of the Council of Europe (PACE). The experts reported as clear violations: the not non-submission of the final text of the bill, which was voted on to the Constitutional Court of Ukraine; voting for this bill together with other legal acts (the so-called ‘batch voting’).

In 2007, three years after the amendment of the Constitution of Ukraine, 102 people’s deputies appealed to the Constitutional Court of Ukraine to declare the law unconstitutional, but it refused to open constitutional proceedings, citing, inter alia, “non-jurisdiction of the issues raised in the constitutional submission to the Constitutional Court of Ukraine”<sup>5</sup>. Although the essence of the constitutional changes – increasing the powers of parliament – were positively received by experts, the way these changes were made usually caused a negative reaction, or silence due to ‘political expediency’.

The political situation and political expediency changed in connection with the results of the next presidential election, which was won by V. Yanukovich, whose advisors supported authoritarian rule. The President and his entourage were not satisfied with the parliamentary-presidential form of government, they needed more powers for the presidency. Therefore, in 2010, 252 people’s deputies argued that the constitutional changes of 2004 had been made with some violations, and applied to the Constitutional Court of Ukraine with a corresponding submission.

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<sup>2</sup> Ю.С. Шемшученко (ed.), *Проблеми теорії конституційного права України*, Київ 2013, р. 181.

<sup>3</sup> І. Коліушко, Ю. Кириченко, *Проблеми дієвості Конституції України та удосконалення її змісту*, [in:] *Конституційна реформа: збірник матеріалів Центру політико-правових реформ за 2007–2013 роки*, І.Б. Коліушко (ed.), Київ 2013, р. 12, [https://www.pravo.org.ua/img/books/files/1458305177constitutional\\_reform\\_b.pdf](https://www.pravo.org.ua/img/books/files/1458305177constitutional_reform_b.pdf) (15.11.2019).

<sup>4</sup> *Ibidem*, р. 13.

<sup>5</sup> *Ухвала Конституційного Суду України про відмову у відкритті конституційного провадження у справі за конституційним поданням 102 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про внесення змін до Конституції України», Закону України «Про внесення змін до розділу IV «Прикінцеві та перехідні положення» Закону України «Про Конституційний Суд України» від 5 лютого 2008 року № 6-у/2008*, <https://zakon.rada.gov.ua/laws/show/va06u710-08> (17.11.2019).

This time, the submission was considered and the Law of Ukraine “On Amendments to the Constitution of Ukraine” of December 8, 2004 No. 2222-IV was declared unconstitutional, on the grounds that it was a violation of the constitutional procedures for its consideration and adoption<sup>6</sup>.

In the opinion of I. Koliushko and Ya. Zhurba, the decision on the unconstitutionality of the amended provisions six years after the adoption of these changes and two years after the decision to refuse to open proceedings in this case – could indicate that the Constitutional Court of Ukraine acknowledged that,

throughout the course of the new version of the Basic Law, it provided not the rule of the Constitution, but the rule of lawlessness.<sup>7</sup>

The question of the legitimacy of these past actions, as well as of the current state institutions, was raised by the Venice Commission. In particular, its opinion on the constitutional situation in Ukraine indicated that,

the president and parliament were elected in accordance with constitutional norms that are no longer recognized as valid. Following this decision, the President of Ukraine had much more power than voters could have predicted when he was elected.<sup>8</sup>

Amendments to the Constitution of Ukraine, which were actually implemented by the Constitutional Court of Ukraine, returned Ukraine to the presidential-parliamentary form of government, mixed electoral system, etc. In this regard, a number of changes were made to the legal acts that regulate the relations concerning the way authorities are elected and the separation of powers.

However, after three years of the state functioning on the basis of this wording of the Basic Law, on February 21, 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine, “On renewal of certain provisions of the Constitution of Ukraine”<sup>9</sup>. On February 22, 2014, Parliament adopted the Resolution of the

<sup>6</sup> Рішення Конституційного Суду України у справі за конституційним поданням 252 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про внесення змін до Конституції України» від 8 грудня 2004 року № 2222-IV (справа про додержання процедури внесення змін до Конституції України) від 30 вересня 2010 року № 20-рп/2010, <https://zakon.rada.gov.ua/laws/show/v020p710-10> (19.11.2019).

<sup>7</sup> І. Коліушко, Я. Журба, *Конституціоналізм чи знуцання над Конституцією*, [in:] І.Б. Коліушко (ed.), *Конституційна реформа: збірник матеріалів Центру політико-правових реформ за 2007–2013 роки*, Київ 2013, p. 34, [https://www.pravo.org.ua/img/books/files/1458305177constitutional\\_reform\\_b.pdf](https://www.pravo.org.ua/img/books/files/1458305177constitutional_reform_b.pdf) (21.11.2019).

<sup>8</sup> Висновок «Про конституційну ситуацію в Україні» № 994\_а36 від 17.12.2010 р. Європейська Комісія за демократію через право (Венеціанська комісія), [https://zakon.rada.gov.ua/laws/show/994\\_а36](https://zakon.rada.gov.ua/laws/show/994_а36) (22.11.2019).

<sup>9</sup> Закон України «Про відновлення дії окремих положень Конституції України» № 742-VII від 21.02.2014 р., <https://zakon.rada.gov.ua/laws/show/742-18#n2> (24.11.2019).

Verkhovna Rada of Ukraine No. 750-VII<sup>10</sup>, which states that, “provisions of the Constitution of Ukraine adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996, as amended by the Laws of Ukraine of December 8, 2004 No. 2222-IV, of February 1, 2011 No. 2952-VI, of September 19, 2013 No. 586-VII” are valid in the territory of Ukraine. It was noted that the Resolution was effective from the date of its adoption and until the Law of Ukraine, “On renewal of certain provisions of the Constitution of Ukraine” of February 21, 2014 No. 742-VII entered into force.

Analyzing the constitutional changes from a legal point of view, O. Yushchuk noted, “the illegal nature of the Resolution, which was to temporarily replace the given law”<sup>11</sup>. The law was described by a researcher as follows:

Unique, from a legal point of view, document! The Verkhovna Rada of Ukraine decides to declare actual those provisions of the Constitution, which were introduced by the Verkhovna Rada of Ukraine in 2004 in an unconstitutional way.<sup>12</sup>

Of course, one must remember in what political situation these legal acts were adopted. The afore-mentioned law and resolution appeared in the context of the Revolution of Dignity. This was a most difficult period for Ukraine, when among all the higher state authorities, to which there was at least some confidence, was parliament. It is difficult to predict what the consequences of the political confrontation in Ukraine could have been if it were not for the swift decisions of MP’s to adopt a number of legal acts. The changes to the Basic Law were justified by political expediency.

Based on the etymological meaning of the words, political expediency means practically useful, rational decisions and activities of the authorities subordinate to the goal<sup>13</sup>. The aim at this time was to stabilize the situation in the country and prevent the representatives of the previous government from ruling the state. However, in the ‘Ukrainian politicum’, political expediency is often the justification for any unexpected decisions and actions of the authorities, including those that violate the current legislation. According to Yu. Shemshuchenko,

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<sup>10</sup> *Постанова Верховної Ради України «Про текст Конституції України в редакції 28 червня 1996 року, із змінами і доповненнями, внесеними законами України від 8 грудня 2004 року № 2222-IV, від 1 лютого 2011 року № 2952-VI, від 19 вересня 2013 року № 586-VII» № 750-VII від 22.02.2014 р.*, <https://zakon.rada.gov.ua/laws/show/750-18> (26.11.2019).

<sup>11</sup> О. Ющик, *Конституція України і політика: до питання критерію істинності*, «Судова апеляція» 2019, № 2 (55), р. 33.

<sup>12</sup> *Ibidem*, р. 32.

<sup>13</sup> О.В. Кукуруз, *Політична доцільність як складова державотворення і правотворення в Україні*, [in:] *Проблеми державотворення і правотворення в умовах модернізації України*, матеріали Всеукраїнської наук. конф. молодих вчених, присвяченої 20-й річниці незалежності України (Київ, June 16, 2011), Київ 2011, р. 23.

considerations of political and other expediency are not grounds for the adoption of a law with violation of the relevant procedure, not in accordance to the current Constitution of Ukraine, etc.<sup>14</sup>

Amendments to the Constitution of Ukraine in 2014 changed the form of government from presidential-parliamentary to parliamentary-presidential. However, this time the people's deputies did not take care to harmonize the other legal acts with the Basic Law. As a result, in the Constitution of Ukraine the parliamentary-presidential form of government was fixed, and in other legal acts the norms that corresponded to the presidential-parliamentary form of government remained in force. The most striking illustration of this were the problems associated with the activities of the parliamentary majority.

In the Constitution of Ukraine, Article 83 was set out in the 2004 Constitution, according to which a coalition government is formed from the different factions of deputies on the basis of the election results and on the basis of coordination of political positions in parliament. The parliamentary majority had many powers under the parliamentary-presidential form of government. However, the deputies, despite returning to this form of government, did not restore the section on a coalition of deputy factions to the Law of Ukraine «On the Regulations of the Verkhovna Rada of Ukraine». Due to the lack of legal regulation concerning the formation, activity and termination of a coalition of deputy factions, during almost the entire cadence of the Verkhovna Rada of Ukraine of the VIII convocation, the following issues were urgent: “Is there a coalition of deputy factions?”, “What is the procedure for formation and termination of a coalition of deputy factions?”<sup>15</sup>.

In addition, once again although the parliamentary-presidential form of government was enshrined in the Constitution of Ukraine, the deputies did not return the proportional electoral system with which it was agreed. As a result of the use of the mixed electoral system, in addition to the factions, there were also majoritarian MP's. This then raised the question: “How can individual MPs join the parliamentary majority if, according to the restored Constitution of Ukraine, it can only consist of factions?”<sup>16</sup> The different forms of government and electoral

<sup>14</sup> Ю.С. Шемшученко, *Що є право?* [in:] Ю.С. Шемшученко (ed.), *Антологія української юридичної думки*. В 10 т., Київ 2005, р. 34.

<sup>15</sup> See О.В. Кукуруз, *Особливості створення і припинення діяльності коаліції депутатських фракцій у Верховній Раді України VIII скликання*, [in:] В.І. Бортніков, Я.Б. Ярош (eds.), *V Всеукраїнські політологічні читання імені професора Богдана Яроша*, зб. наук. пр., Lutsk 2016, pp. 102–110.

<sup>16</sup> See О.В. Кукуруз, *Правові форми діяльності політичних партій у Верховній Раді України*, [in:] *Конституційний полілог. 20 років Конституції України: суспільство і влада в конституційному процесі*, Збірка тез міжнародної науково-практичної конференції. Київ 2016, pp. 281–289.

systems could be reconciled, and the problem was that the existing legislation had not been amended it to regulate the above-mentioned issues.

It should be noted that the academic community responds to the quality and quantity of constitutional changes in Ukraine, indentifying for the authorities the shortcomings and consequences of certain changes. In particular, A. Kolodiy emphasizes that,

arbitrary transitions from one version of the Constitution to another undermined the legitimacy of the Basic Law and its ability to create a sound basis for the legal order and institutional stability in the state.<sup>17</sup>

While, V. Shapoval compares the situation of constitutional theory and the practice of constitutional rulemaking with a game of football, “that almost everyone considers themselves capable of playing”<sup>18</sup>. The researcher notes that by ignoring the achievements of the theory of constitutionalism in law-making.

The area of constitutional law is often held hostage to politics that is not in line with the objective public interest, but is manifestation of group or even individual interests.<sup>19</sup>

O. Yushchuk reminds us, that a, “constitution is a strategic law of the state, so its changes should not depend on the whims of certain politicians”<sup>20</sup>. He points out that in Ukraine, “constitutional legality is manipulated for the sake of their narrow party expediency, in spite of public expediency”<sup>21</sup>. The negative role of lawyers in these processes, including the Constitutional Court of Ukraine, is not overlooked by the researcher. O. Yushchuk believes that the Constitution, and forming an attitude to it, and the reasons the changes made to it, are criteria on the basis of which it is necessary to assess the genuineness of policy and politicians.

Increasingly, researchers have identified the ambiguous role of the constitutional court in the struggle for power between the branches of power. J. Zalesny points to the dependence of decisions of constitutional courts on the alignment of political forces in power and the current short-term interests of politicians. The researcher notes the ability of modern constitutional courts to create legisla-

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<sup>17</sup> А. Колодій, *Проблема вибору форми державного правління в Україні (в контексті конституційної реформи)*, «Наукові записки Інституту політичних і етнонаціональних досліджень ім. І.Ф. Кураса НАН України» 2016, *Issues* 3–4 (83–84), p. 189.

<sup>18</sup> В. Шаповал, *Феномен Конституції у контексті вітчизняної політико-правової «міфології»*, «Дзеркало тижня» 2008, 8 серпня, [https://dt.ua/POLITICS/fenomen\\_konstitutsiyi\\_u\\_konteksti\\_vitchiznyanoi\\_politiko-pravovoyi\\_mifologiyi.html](https://dt.ua/POLITICS/fenomen_konstitutsiyi_u_konteksti_vitchiznyanoi_politiko-pravovoyi_mifologiyi.html) (1.12.2019).

<sup>19</sup> В.М. Шаповал, *Феномен конституційного права*, монографія, Київ 2017, p. 5.

<sup>20</sup> О. Ющик, *Конституція як критерій істинної політики*, „Голос України” 2019, 20 червня, <http://www.golos.com.ua/documents/ku200619.pdf> (5.12.2019).

<sup>21</sup> Ibidem.

tion that is actually within the competence of parliament<sup>22</sup>. In fact, instead of securing the separation of powers enshrined in the Basic Law, the constitutional courts sometimes even violate it. Comparing the activity of constitutional courts in post-Soviet countries, including Ukraine, J. Zalesny and V. Chirkin conclude that,

as an element of the system of public authorities, they depend on the processes taking place throughout the system, including the primacy of political decisions over those, which are shared by key players of power relations.<sup>23</sup>

O. Fisun states that the constitutions and constitutional law of the post-Soviet countries are an agreement between certain political forces.

The balance is disturbed when, for some actors, the benefits from changing the rules of the game begin to exceed the costs required for such changes, at which point they begin to manipulate the constitution and laws.<sup>24</sup>

In Ukraine neopatrimonialism had been established for a long time before the establishing of the democratic regime. This largely explains why certain institutions and processes are significantly different from those taking place in other countries that underwent transformation.

For a deeper understanding of the causes of constitutional changes, let us consider the experience of the Republic of Poland. As of December 31, 2019, the Constitution of the Republic of Poland has only been amended twice. The first time, it concerned allowing the extradition of Polish citizens in certain situations<sup>25</sup>, the second – prohibited a person sentenced to imprisonment for an intended crime to be elected to the Sejm or the Senate<sup>26</sup>.

The first of the above-mentioned changes was necessary to harmonize Polish law and European Union law. It is worth noting that the authors of the Polish Constitution in 1997 generally took Poland's strategic policy into account. In particular, in Article 90 (1) they stated: "The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international

<sup>22</sup> Я. Залесны, *Защита доминирующей роли конституции и разделение власти – спор о методах создания права в современных государствах*, «Studia Politologiczne» 2018, Vol. 48, p. 80.

<sup>23</sup> J. Zalesny, V. Chirkin, *Constitutional Justice in the Post-Soviet States. A Comparative Analysis*, [in:] J. Zalesny (ed.), *Constitutional Courts in Post-Soviet States: Between the Model of a State of Law and Its Local Application*, Peter Lang, Frankfurt am Main 2019, p. 600.

<sup>24</sup> O. Fisun, *Ukrainian Constitutional Politics: Neopatrimonialism, Rent-seeking, and Regime Change*, [in:] H.E. Hale, R.W. Orttung (eds.), *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, Stanford California 2016, p. 105.

<sup>25</sup> *Ustawa o zmianie Konstytucji Rzeczypospolitej Polskiej z dnia 8 września 2006 r.*, Dz. U. z 2006 r. Nr 200, poz. 1471.

<sup>26</sup> *Ustawa o zmianie Konstytucji Rzeczypospolitej Polskiej z dnia 7 maja 2009 r.*, Dz. U. z 2009 r. Nr 114, poz. 946.

institution the competence of organs of State authority in relation to certain matters". So after Poland became a NATO member (1999) and the European Union (2004), the Constitution did not require significant changes.

It should be noted that there have been quite a few draft laws registered with the Sejm III–VIII cadences. In particular, during the III cadence of the Sejm (1997–2001) two bills were submitted, IV (2001–2005) – none, V (2005–2007) – seven, VI (2007–2011) – seven<sup>27</sup>, VII (2011–2015) – three<sup>28</sup>, VIII (2015–2019) – one<sup>29</sup>. Therefore, out of the 20 draft laws amending the Constitution of the Republic of Poland, as stated above, only two were adopted.

It can be assumed that the large number of amendments made to the Ukrainian Constitution and insignificant changes to the Polish Constitution were caused by the conditions provided for the amendment of these Basic Laws. According to the Constitution of the Republic of Poland, a draft law to amend the Constitution may be tabled by at least 1/5 the statutory number of deputies, the Senate or the President of the Republic of Poland (Article 235 (1)). If the bill to amend the Constitution is to be adopted by the Sejm, it requires a majority of at least 2/3 of the votes in the presence of at least half of the statutory number of deputies, and a vote in the Senate by an absolute majority of votes in the presence of at least half of the statutory number of senators (Article 235 (4)).

More complex requirements are envisaged for the amendment of the provisions contained in three chapters: "The Republic" (Chapter I); "The Freedoms, Rights and Obligations of Persons and Citizens" (Chapter II); "Amending the Constitution" (Chapter XII).

According to the Constitution of Ukraine, a bill on amendments to the Constitution of Ukraine may be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine or at least 1/3 of the People's Deputies of Ukraine from the constitutional composition of the Verkhovna Rada of Ukraine (Article 154). The bill on amendments to the Constitution of Ukraine, if previously approved by a majority of the constitutional composition of the Verkhovna Rada of Ukraine, shall be considered adopted if at the next regular session of the Verkhovna Rada

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<sup>27</sup> R. Stawicki, *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997–2011 w świetle projektów ustaw oraz uchwalonych nowelizacji*, Warszawa 2011, pp. 3, 5, 8.

<sup>28</sup> *Poselski projekt ustawy o zmianie Konstytucji Rzeczypospolitej Polskiej* (druk sejmowy nr 1646), <http://sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?nr=1646> (8.12.2019); *Poselski projekt ustawy o zmianie Konstytucji Rzeczypospolitej Polskiej* (druk sejmowy nr 2374), <http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2374> (9.12.2019); *Przedstawiony przez Prezydenta Rzeczypospolitej Polskiej projekt ustawy o zmianie Konstytucji Rzeczypospolitej Polskiej* (druk sejmowy nr 3424), <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=3424> (10.12.2019).

<sup>29</sup> *Poselski projekt ustawy o zmianie Konstytucji RP* (druk sejmowy nr 166), <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=166> (12.12.2019).

of Ukraine no less than 2/3 of the constitutional composition of the Verkhovna Rada of Ukraine has voted (Article 155).

As in Poland, there are special requirements for the provisions contained in certain chapters. In particular, these are: “General Principles” (Chapter I); “Election. Referendum” (Chapter III), “Introducing Amendments to the Constitution of Ukraine” (Chapter XIII). A significant difference between the formal conditions for changing the constitution in Ukraine and the Republic of Poland is the presence in the latter the second chamber of parliament, which serves as a barrier to rapid change.

However, in addition to formal requirements, other factors are important.

T. Słomka names three factors that contribute to the stability of the Basic Law in Poland – procedural, political and practical.

1. The procedure for amending the Constitution of the Republic of Poland implies the agreement of the majority of parliamentary factions on the necessary changes.
2. Political forces in their manifestos usually state their position on the desired form of government, the constitutional status of higher state authorities, the status of parliamentarians, etc. Such provisions are a political identification and therefore deputies reluctant to compromise.
3. Practice, especially decisions of the Constitutional Tribunal, are able to adapt constitutional provisions to new political, social and economic conditions, without changing the provisions of the Basic Law<sup>30</sup>.

I. Małajny suggests that the frequency of constitutional changes depends on five factors.

1. The conditions placed on changing the basic law – “the more complex it is, the less the number of innovations is”.
2. The degree of generalization of its formulations – “the greater it is, the less frequent the changes are”.
3. The degree to which the formal constitution coincides with the substantive – “the greater the degree is, the less frequent the constitution changes are”.
4. The activity of the constitutional court in the process of adapting the constitution to real changes – “the greater the activity is, the less the changes in the basic law are required”.
5. The scope of constitutional regulation – “the narrower the scope is, the longer the basic law is”<sup>31</sup>.

<sup>30</sup> T. Słomka, *Specyfika i złożoność polskiej transformacji ustrojowej*, [in:] S. Sulowski, J. Szymanek (eds.), *Ustrój polityczny państwa: Polska, Europa, świat*, Warszawa 2013, pp. 187–188.

<sup>31</sup> I. Małajny, *Zagadnienie zmiany konstytucji*, [in:] S. Sulowski, J. Szymanek (eds.), *Ustrój polityczny państwa: Polska, Europa, świat*, Warszawa 2013, p. 572.

In my opinion, these factors are decisive in the context of a high political and legal culture of power and a stable society. Instead, in a period of transformation, when subjective factors dominate over objective factors, even properly formulated constitutional provisions are subject to change.

Thus, during the 23 years of the existence of the Constitution of Ukraine, there have been two forms of government employed interchangeably: 1996–2006 – presidential-parliamentary; 2006–2010 – parliamentary-presidential; 2010–2014 presidential-parliamentary, from 2014 – parliamentary-presidential. The analysis presented above has shown that amendments to the Constitution of Ukraine were introduced in order to gain more powers for one of the two institutions – the President or Parliament, depending on the interests of political forces that were able to influence this process. The biggest problem was that the legal provisions governing relations in the sphere of organization of public authorities activity were not always consistent. Controversial issues that arose after the next hasty constitutional changes undoubtedly diminished the value of the Constitution, since it did not ensure compliance of all other legal acts with the Basic Law.

Various forms of government and electoral systems, experimented with in Ukraine, have shown that they are not the only factors in the formation of a legal state. During the transformation period it all depends on the subjects, who use the forms and systems, and in what way and for what purpose they do it. Therefore, it does not make sense to change the forms and systems every four years. Instead, it is necessary to change human consciousness. Perhaps, given the Ukrainian experience, constitutional provisions regarding the form of government and electoral system should be attributed to those which need special procedures.

In the example of the Republic of Poland the reasons for the amendments made to the Basic Law were not political in the sense of the redistribution of powers between the branches of the state. In contrast, changes to the Constitution appear to reflect the state's desire to resolve issues raised by the wider society and the international community.

Policy is always present in the process of drafting and adopting constitutional changes. However, the reasons for these changes must be related to the public policy, which is based on public interests, and not to politics as a power struggle. One of the important functions of a constitution is to help stabilize a state. Its provisions should reflect strategic state policy not ones based on immediacy.

Based on the etymological meaning of the word 'political' and the essence of the multifaceted phenomena policy and politics, political reasons for amending the basic law do not mean their unequivocal non-conformity with law. The analysis has shown that the political reasons for amending a constitution must be justified by the necessity to alter the constitutional provisions in connection with a change of the strategic public policy in a certain sphere of social relations.

## Bibliography

- H.K. Colebatch, *Policy. Basic Concepts in the Social Sciences*, O. Demianchuk (trans. from English), Kyiv 2004.
- O. Fisun, *Ukrainian Constitutional Politics: Neopatrimonialism, Rent-seeking, and Regime Change*, [in:] H.E. Hale, R.W. Orttung (eds.), *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, Stanford California 2016.
- I.B. Koliushko (ed.), *Constitutional Reform, Collection of Materials from the Center for Political and Legal Reforms 2007–2013*, Kiev 2013.
- A. Kolodiy, *The Challenge of the Form of Government Selection (in the Context of Constitutional Reform in Ukraine)*, «Scientific Notes of I.F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine» 2016, Issues 3–4 (83–84).
- O.V. Kukuruz, *Legal Forms of Activities of Political Parties in the Verkhovna Rada of Ukraine*, [in:] *Constitutional Polylogue. 20th Anniversary of the Constitution of Ukraine: A Society and Government in the Constitutional Process*, Collection of the International Conference Papers, Kyiv 2016.
- O.V. Kukuruz, *Peculiarities of Formation and Termination of the Coalition of Deputy Fractions in the Verkhovna Rada of Ukraine of VIII Convocation*, [in:] V.I. Bortnikov, Ya.B. Yarosh (eds.), *V All-Ukrainian Political Science Readings named after Professor Bogdan Yarosh*, Collection of Scientific Works, Lutsk 2016.
- O.V. Kukuruz, *Political Expediency as a Component of State Formation and Law-making in Ukraine*, [in:] *Problems of State Formation and Law-making in Conditions of Modernization of Ukraine*, Materials of the All-Ukrainian Scientific Conference of Young Scientists on the 20th Anniversary of Independence of Ukraine (Kyiv, June 16, 2011), Kyiv 2011.
- I. Małajny, *Zagadnienie zmiany konstytucji*, [in:] S. Sulowski, J. Szymanek (eds.), *Ustrój polityczny państwa: Polska, Europa, świat*, Warszawa 2013.
- Yu. Shemshuchenko (ed.), *Problems of the Theory of Constitutional Law of Ukraine*, Kyiv 2013.
- V.M. Shapoval, *The Phenomenon of the Constitution in the Context of Domestic Political-Legal "Mythology"*, «Dzerkalo Tyzhnia» 2008, August 8.
- V.M. Shapoval, *The Phenomenon of Constitutional Law*, Monograph, Kyiv 2017.
- Yu.S. Shemshuchenko, *What is law?* [in:] Yu.S. Shemshuchenko (ed.), *Anthology of Ukrainian Legal Thought*, In 10 Vol., Kyiv 2005.
- T. Słomka, *Specyfika i złożoność polskiej transformacji ustrojowej*, [in:] S. Sulowski, J. Szymanek (eds.), *Ustrój polityczny państwa: Polska, Europa, świat*, Warszawa 2013.
- R. Stawicki, *Zmiany Konstytucji Rzeczypospolitej Polskiej w latach 1997–2011 w świetle projektów ustaw oraz uchwalonych nowelizacji*, Warszawa 2011.
- O. Yushchuk, *A Constitution as a criterion of true policy*, «Holos Ukrainy» 2019, June 20.
- O. Yushchuk, *The Constitution of Ukraine and politics: the question of the criterion of truth*, «Sudova apeliatsiia» 2019, No. 2 (55).
- J. Zaleśny, V. Chirkin, *Constitutional Justice in the Post-Soviet States. A Comparative Analysis*, [in:] J. Zaleśny (ed.) *Constitutional Courts in Post-Soviet States: Between the Model of a State of Law and Its Local Application*, Peter Lang, Frankfurt am Main 2019.
- J. Zaleśny, *Protection of the Dominant Role of the Constitution and the Separation of Power – a Dispute About the Methods of Making Law in Modern States*, «Studia Politologiczne» 2018, Vol. 48.