

CONSTITUTIONAL LEGALITY AS A LEGAL REGIME FOR THE EXERCISE OF STATE POWER IN COUNTRIES IN TRANSITION DEMOCRACIES (POST-SOVIET STATES)

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Abstract: *The study considers the problem of constitutional legality as a legal regime of state power in the countries of transition democracies (post-Soviet states). Conceptual approaches of constitutional legality as a special property of laws influencing the development of a democratic constitutional system are considered. The purpose of the study is to investigate the legal nature of constitutional legality and the variety of its manifestation in the dynamics of public relations, in particular, in the mechanism of state power, the activities of judicial bodies and constitutional review bodies. The chosen methodology: dialectical, systemic, interdisciplinary, intersectoral research methods helped to most fully and accurately determine the essential features of constitutional legality as a special property of legal law. The study covers the practical significance of constitutional legality through its feature – a special legal regime that permeates all social relations: from the creation of the constitution to law enforcement during the restoration of any sectoral rights of individuals. It is stated that there are few definitions of constitutional legality in the doctrine and it is concluded that constitutional legality is closely related to democracy and the principle of constitutional order. It is proved that constitutional legality is a complex social and legal phenomenon, which has relatively independent features and is a property objectively inherent in the social order of a democratic state. It is substantiated that ensuring constitutional legality lies in the direct effect of the provisions of the Constitution, as each subject of constitutional and legal relations can be directly guided by the provisions of the Fundamental Law and, on their basis, refer to relevant institutions to protect their rights and freedoms. An original definition of constitutional legality is developed: an actual functioning system of constitutionalism, a complex phenomenon, which lies in strict observance of the constitution and its provisions during its direct action and law enforcement by all public authorities, public organisations, officials of all levels and citizens, courts and is an integral feature of the constitutional system as an inseparable component of legality, through which the principle of legality in a democratic state governed by the rule of law is fully implemented and the stability of legislation is enhanced (which, unfortunately, the transition countries lack).*

Keywords: judicial law enforcement, the Constitutional Court, the rule of law, court decision.

Public relations always require streamlining, despite their development and constant variability. Such an arrangement requires the lawful conduct of the participants, which is based on law and legality. The constitutional order is the core of the rule of law¹ and is the result of the implementation of constitutional legality.² In the most general form, this refers to the implementation of the provisions of the Constitution by all subjects of law

¹ E. de Wet, “The International Constitutional Order”, in *The International and Comparative Law Quarterly*, 2006, vol. 55, no. 1, p. 51-76.

² A.P. Lelechenko, O.Y. Lebedinska, S.V. Somin, V.M. Vakulenko, N.S. Pikh, “Introduction of the concept of sustainable development in the context of the constitutional reform of Ukraine”, in *Journal of the National Academy of Legal Sciences of Ukraine*, 2020, vol. 27, no. 4, p. 53-65.

through their actions on its basis³. Legality is one of the fundamental concepts of legal science and practice, which contains formal (legality for the sake of letter of the law) and substantive requirements of legality (rule of law, legal law, observance and respect for human rights and freedoms, justice and reasonableness of law enforcement, etc.). Undoubtedly, the unity of substantive and formal requirements constitutes the basis for the constitutional legitimacy necessary to ensure the freedom and enjoyment of citizens' rights, the functioning of civil society, the exercise of democracy, scientifically sound construction and rational activity of public authorities⁴.

In turn, the concept of constitutional legality is relatively new in the domestic legal vocabulary of transition democracies, as the legislation of such countries is in constant motion and change, including periodically recurring diametrically opposed vectors of development, which, unfortunately, is not excluded. The term "constitutional legality" in the legislation of different countries is usually not directly enshrined and used. In this regard, the category of "constitutional legality" has hardly been studied at the scientific level, but the need for its selection and study is directly conditioned by the growing role of the Constitution in society and the state, the content of the Constitution⁵, giving it the highest legal force and its provisions – direct effect⁶. Theoretical considerations on the concept of constitutional legality, as well as legality in general, are described by contradictory approaches to explaining certain aspects of the concept of legality. Elucidation of legality as a principle of the constitutional order was accompanied by the fact that its individual features and parties were prioritised without sufficient grounds. The main disadvantage was that, despite the variety of studies covering this subject, no starting point was found that would allow to build a logical series of constitutional legality as a legal category⁷.

³ M.S. Basiev, *The institution of federal intervention as an emergency mechanism for ensuring constitutional order in the territory of a federal state: a comparative legal analysis: thesis of the candidate of law sciences*, RUDN, Moscow, 2007; S.V. Narutto, "The supremacy of the Constitution as the basis of the constitutional order in Russia", in *Russian Law*, 2018, no. 3, p. 30–35.

⁴ O.V. Scherbanyuk, "The role of the Constitutional Court of Ukraine in ensuring constitutional legality: problems and ways to solve it", in *Law and Society*, 2014, vol. 6, no. 2, p. 21–27; D. Pylypenko, "Editorial: Current issues in criminology and sociology: Evidence from CIS countries", in *International Journal of Criminology and Sociology*, 2020, vol. 9, p. 1.

⁵ L. Samofalov, O. Samofalov, D. Shevchenko, "Constitutional state is the main component of civil society", in *Law Journal of the National Academy of Internal Affairs*, 2021, vol. 12, 189-197.

⁶ Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

⁷ O.V. Scherbanyuk, "The role of the Constitutional Court of Ukraine in ensuring constitutional legality: problems and ways to solve it", in *Law and Society*, 2014, vol. 6, no. 2, p. 21–27; B.M. Nurgaliyev, K.S. Lakbayev, A.K. Kussainova, "Euraspol as an additional mechanism for transnational crime control", in *Life Science Journal*, 2014, vol. 11, no. 9 Spec. Issue, p. 421-425.

The process of fulfilment of the principles of the rule of law in the countries of transition democracies aims at a gradual movement towards the fulfilment of this state-building ideal, makes it extremely important to study the issues related to law and order. This is conditioned by the fact that it is through the implementation of the basic requirements of legality is the development of a holistic legal framework that serves as a reliable foundation for the interaction of society and the state, and their gradual transformation into civil society and the rule of law⁸.

Constitutional legality has specific properties as a special category of constitutional law. Notably, there are few definitions of constitutional legality in doctrine, considering the actual modelling by judicial and constitutional practice of such a property of a particular law in each case during judicial enforcement or constitutional review⁹. Constitutional legality is a complex social and legal phenomenon that has relatively independent features and is a property objectively inherent in the social order. Constitutional legality is usually established by systematic research and establishment of the facts of manifestation in the practical activity of the subjects of constitutional legal relations¹⁰. For M.V. Vitruk, constitutional legality is a real system of constitutionalism that ensures the full effect of the legal Constitution¹¹.

The purpose of the study is to investigate the legal nature of constitutional legality and various options for its manifestation in the dynamics of social relations, in particular, in the mechanism of state power, the activities of the judiciary and the body of constitutional review.

Materials and methods

Thus, the study of constitutional research should begin with the study of it as a special system of constitutionalism, which traces the systematic method of research. O.B. Skrypnyuk writes that a direct analysis of constitutional legality as a basic element of the implementation of the principle of legality is

⁸ O.V. Skrypnyuk, O.V. Kmyta, "Constitutional legality, as the basic provision of the principle of legality in Ukraine", in *Almanac of Law*, 2016, no. 7, p. 20–25; N.S. Kuznietsova, O.V. Petryshyn, D.S. Pylypenko, "The civil code of Ukraine - A reliable regulator of civil relations in civil society", in *Global Journal of Comparative Law*, 2021, vol. 10, no. 1-2, p. 5–15.

⁹ J.C. Love, "Presumed general compensatory damages in constitutional tort litigation: A corrective justice perspective", in *Washington and Lee Law Review*, 1992, vol. 49, no. 1, p. 67-91.

¹⁰ Yu.P. Eremenko, *Soviet Constitution and legality*, Publishing house of the Saratov State University, Saratov, 1982.

¹¹ N.V. Vitruk, *Legality: Concept, protection and provision. General theory of law*, Publishing house of the Nizhny Novgorod High School of the Ministry of Internal Affairs of the Russian Federation, Nizhny Novgorod, 1993.

impossible without the study of methodologically important points¹². Using the concept of "constitutional legality", the scientist emphasises that it is necessary to carefully describe the meaning that is embedded in modern legal research in this concept. Some authors associate constitutional legality primarily with such an element as the protection and safeguarding of constitutional legality, or, in other words, with the analysis of the system of ensuring the operation of the constitution. In this case, the main subjects of analysis are the provision of constitutional legality, its protection, constitutional liability and constitutional control¹³. The dialectical method of studying constitutional legality seems to be the leading one in this area.

In turn, Yu.V. Tkachenko, referring to the study by Yu.M. Todyka, fairly emphasises that "the Constitution of Ukraine puts at the centre of the legal system of the state the consolidated requirement that no regulations should contradict the Fundamental Law, stating that the principle of the rule of law is implemented primarily through the rule of the Constitution and the law"¹⁴. Yu.M. Todyka believes that "the foundations of constitutional legality are enshrined in the text of the Constitution of Ukraine itself, in the provision that public authorities and local governments, their officials must act only on the basis, within the powers, and in accordance with the procedure prescribed by the Constitution and laws of Ukraine (Article 19 of the Constitution of Ukraine)¹⁵.

Yu.V. Tkachenko reflects on the definition of constitutional legality and states that sole recognition of its multifaceted phenomenon is insufficient. One must find in it the main, fundamental, which describes it as a holistic socio-legal phenomenon, which is manifested externally, primarily as a principle of the constitutional order. Based on other opinions and author's positions, the scholar concludes that constitutional legality is a universal legal principle of the constitutional order of the state, which is based on the establishment and activities of all public authorities, local governments, NGOs and individuals¹⁶. Instead, N.M. Kolosova points out the impossibility of applying a narrow approach to the understanding of constitutional legality, differentiates its preventive significance also at the stage of restoration of constitutional rights. The scholar defines constitutional legality as a set of requirements for power

¹² O.V. Skrypnyuk, O.V. Kmyta, "Constitutional legality, as the basic provision of the principle of legality in Ukraine", in *Almanac of Law*, 2016, no. 7, p. 20–25.

¹³ *Ibidem*.

¹⁴ Yu.N. Todyka, *Constitutional law of Ukraine: Branch, science, academic discipline*, Folio, Rajder, Kharkiv, 1998; Yu.N. Todyka, *Fundamentals of the constitutional system of Ukraine*, Fakt, Kharkiv, 1999; Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

¹⁵ Yu.N. Todyka, *Fundamentals of the constitutional system of Ukraine*, Fakt, Kharkiv, 1999.

¹⁶ Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

structures in the process of creating constitutional provisions, their implementation, as well as a system of measures aimed at protecting constitutional legality, including its restoration¹⁷. According to V.F. Melaschenko, constitutional legitimacy is an institution of constitutional registration of democracy¹⁸. N.M. Parkhomenko points out that constitutional legality is an integral feature of the modern democratic and legal state, its constitutional order¹⁹. I.A. Yashina emphasised that the most important form of manifestation of legality as a legal regime of organisation and functioning of a democratic and social state is constitutional legality, by which she means the political and legal regime, which lies in strict observance of basic (fundamental) provisions of the Constitution in the context of ensuring and protecting human and civil rights and freedoms²⁰.

Thus, this study considers constitutional legitimacy through the lens of dialectical, systemic, interdisciplinary, intersectoral research methods, which helped to most fully and accurately determine its essential features as a special property of the law.

Results and discussion

Definition of the category „constitutional legality” in acts of legislation

Despite the lack of a legal definition of constitutional legality, in transition countries it is the law-making and law-enforcement (primarily court) practice that actually recognises the regime of constitutional legality²¹. For example, it follows from the provisions of the Constitution of the Republic of Belarus that constitutional legality is enshrined indirectly through the establishment of the rule of law and the procedure for resolving conflicts between law and decree: “The rule of law is established in the Republic of Belarus. The state, all its bodies and officials act within the framework of the Constitution and acts of legislation adopted in accordance with it. Legal acts or their separate provisions, which are recognised in the manner prescribed by law as contradictory to the provisions of the Constitution, have no legal force.

¹⁷ N.M. Kolosova, *Ensuring constitutional legality. Legality in the Russian Federation*, Spark, Moscow, 1998.

¹⁸ V.F. Melaschenko, “Institutions of constitutional law”, in: V.F. Pohorilka (Ed.), *Constitutional law of Ukraine*, Naukova dumka, Kyiv, 2000.

¹⁹ N.M. Parkhomenko, “Constitutional legality as a goal, requirement and legal regime: Theoretical aspects”, in *Almanac of Law*, 2012, no. 3, p. 38-41.

²⁰ I.A. Yashina, *The principle of legality in court proceedings: Constitutional interpretation*, Saratov State Law Academy, Saratov, 2015.

²¹ A.M. Kolodiy, O.A. Kolodiy, “Types of law-making powers of the Ukrainian people”, in *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, vol. 28, no. 3, p. 36-46; F. Calderon-Valencia, J.J. Perez-Montoya, F.S. De Morais, “AI systems in Brazilian supreme federal court and the Colombian constitutional court experiences: Prospective analysis”, in *Revista De Direito, Estado e Telecomunicacoes*, 2021, vol. 13, no. 1, p. 143-169.

Statutory acts of state bodies are published or made public in another way provided by law” (Article 7 of the Constitution of Belarus); “The Constitution has the highest legal force. Laws, decrees, orders, and other acts of state bodies are issued based on and in accordance with the Constitution of the Republic of Belarus. In case of discrepancy of a law, decree or order with the Constitution, the Constitution shall apply. In the event of a discrepancy between a decree or order with the law, the law shall prevail only if the authority to issue the decree or order has been granted by law”²².

In addition, while referring to the Fundamental Law of Ukraine, it should be noted that the Constitution of Ukraine indirectly points to the principle of constitutional legality as a fundamental principle of legal regulation. This conclusion follows from the analysis of the text of the Fundamental Law of Ukraine. Constitutional legality can be traced in many provisions of the Constitution of Ukraine, although it is not directly defined. Thus, Article 8 of the Fundamental Law of Ukraine proclaims the principle of the rule of law and determines that the Constitution of Ukraine has the highest legal force and all regulations must comply with it and be adopted on its basis. The same provision establishes that the provisions of the Constitution are of direct effect and recourse to the court to protect the constitutional rights and freedoms of human and citizen directly based on the Constitution of Ukraine is guaranteed.²³ Further, the legal regime of constitutional legality can be traced in other articles of the Fundamental Law of Ukraine, in particular: Articles 6, 19, 68, 85, 129: the principle of separation of powers, the constitutional principles of law and order, the constitutional obligations of everyone to strictly abide by the Constitution of Ukraine and the laws of Ukraine and the constitutional principles of administration of justice in Ukraine.

Furthermore, the regime of constitutional legality can be indirectly traced in the provisions of the procedural codes: “6. If the court concludes that a law or other legal act contradicts the Constitution of Ukraine, the court does not apply such a law or other legal act, but applies the provisions of the Constitution of Ukraine as provisions of direct effect²⁴. In this case, the court, after deciding on the case, appeals to the Supreme Court to resolve the issue of submitting a petition to the Constitutional Court of Ukraine on the constitutionality of a law or other legal act, the constitutionality of which falls

²² Constitution of the Republic of Belarus, 1994. Available at: <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>.

²³ Constitution of Ukraine, 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

²⁴ Law of Ukraine No. 2147-VIII “On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts”, 2017. Available at: <https://zakon.rada.gov.ua/laws/show/2147-19>.

within the jurisdiction of the Constitutional Court of Ukraine²⁵. The analysis of these provisions of the procedural codes gives grounds to believe that during the consideration of the case, the judge should refer not only to the letter of the law, but also clarifies the spirit of the law.²⁶ That is, they find the meaning of the rule of law, which must comply with the Fundamental Law of Ukraine. These provisions are contained in the articles entitled: "Rule of law and sources of law applied by the court" – the Civil Procedural Code of Ukraine and the Commercial Procedural Code of Ukraine and "Sources of law applied by the court" – Code of Administrative Judicial Procedure of Ukraine. Thus, despite the lack of direct statutory enshrinement of constitutional legality in legislation, the judicial practice recognises and uses this requirement of the principle of legality in a broad, comprehensive meaning²⁷. Thus, constitutional legality is the guiding principle of the constitutional order and the corresponding legal regime.

Constitutional legality and constitutional order and democracy

Constitutional legality as a principle or idea, declared in political and legal documents, manifests itself not simply as a linear, ordinary element of the principle of legality, but is the core of the latter. This is conditioned by the main parameters of the social and state system, the status of human and citizen, which are determined by the Fundamental Law of Ukraine (for example, the provisions of Section III). That is, constitutional legality makes provision for the legal nature of the Constitution itself in the legal system and throughout the state²⁸.

Therewith, the existence of constitutional legality should be highlighted, although the lack of branch legality should also be mentioned. This conclusion was made on the basis of research conducted by Yu. P. Yeremenko, who in the Soviet period defined constitutional legality as an independent object of study and denial of the existence of branch legality. The scholar noted that legality is one, its requirements are equally valid in all areas of law. Since the general level of legality depends on the observance of the Constitution of Ukraine, the state

²⁵ *Ibidem*.

²⁶ T. Tur, "Functions of measures of ensuring a claim in administrative proceedings", in *Social and Legal Studies*, 2021, no. 3, p. 35-40.

²⁷ J.E. Magnet, "The presumption of constitutionality", in *Osgoode Hall Law Journal*, 1980, vol. 18, no. 1, p. 87-145.

²⁸ V.V. Klochkov, *Requirements of legality: Concept, types, genesis (theses)*, Manuskript Moscow, 1994; O.N. Gromova, "Constitutional legality and its provision in the Russian Federation", in *Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia*, 2011, vol. 4, no. 20, p. 20–23.

attaches special importance to strengthening constitutional legality²⁹. Ensuring constitutional legitimacy in a separate global direction, in fact, is a practical principle of human priority and human rights. And this process was interpreted by M.V. Tsvik as a transfer of attention from the state to the individual³⁰. Therefore, constitutional legality has a universal all-encompassing significance in the mechanism of legal regulation. It acquires special importance in the modern conditions of the XXI century of Ukraine's development: in socio-economic, political and legal aspects. Such aspects are expressed in the principles of the modern constitution, as directly outlined in the Fundamental Law of Ukraine (for example, recognition of a person, their life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value – Article 3). Thus, describing the essence of constitutional legality, it should be recognised that apart from the purely formal requirement of the constitution, one should also consider the nature of this constitution, namely – whether it can be described as the embodiment of constitutionality³¹.

Constitutional legality should begin during the creation of the constitution of the state, because the principles of the Constitution are the principle of ensuring constitutional legality.³² This is the preventive principle of constitutional legality as a principle of constitutional order. It is at this stage that the preconditions are laid for further ensuring constitutional legality, and not only its declarative proclamation. The development of any society, especially a legal democratic one, requires the existence of such a Fundamental Law, that would be a flexible and progressive and at the same time stable legal act, which enshrines the most important constitutional values, the fundamental laws of the state and its structures³³.

Thus, constitutional legality should be considered as an inseparable component of legality, which within the general regime of legality requires compliance with only fundamental provisions³⁴. I. Ya. Yashina notes that constitutional legality acts as the fundamental concept of legality, because the Constitution proclaims legality as a principle of the state, its legal system, the activities of the state mechanism and all components of the legal system. In

²⁹ Yu.P. Eremenko, *Soviet Constitution and legality*, Publishing house of the Saratov State University, Saratov, 1982.

³⁰ M.V. Tsvik, *Some features of modern Ukrainian constitutionalism*, Pravo, Kharkiv, 2001.

³¹ O.V. Skrypnyuk, O.V. Kmyta, "Constitutional legality, as the basic provision of the principle of legality in Ukraine", in *Almanac of Law*, 2016, no. 7, p. 20–25.

³² O. Spinchevska, "Legal positions of the constitutional court of Ukraine as a source of legal regulation of the constitutional jurisdictional process", in *Scientific Journal of the National Academy of Internal Affairs*, 2021, vol. 116, no. 3, p. 57–67.

³³ F.M. Rayanov, R.G. Miniahmetov, D.A. Ponomarev, *Law and legality in a democratic society*, Pravo i Gosudarstvo, Moscow, 2004.

³⁴ Yu. Dmitriev, S. Petrov, K. Arimbekov, "The concept and principles of constitutional legality", in *Law and Life*, 2001, no. 38, p. 5–26.

this sense, legality is recognised as a necessary prerequisite for strengthening the legal foundations of statehood, enshrined in the Fundamental Law of the country³⁵.

The requirements of constitutional legality in terms of fulfilment of the humanistic and democratic potential of the Constitution of Ukraine are aimed at creating appropriate conditions for ensuring the freedom of citizens, their constitutional rights. Freedom of the individual in society means the possibility of active action of the individual based on the Constitution and constitutional law in all spheres of public life, protection from any arbitrariness and lawlessness, it is provided by socio-economic, political, ideological guarantees. Constitutional legality, acting as one of the types of political and legal guarantees, ensures individual freedom not only in the political and legal sphere, but also in other spheres of public life³⁶. The modern Constitution should be a well-thought-out model of organisation of all spheres of society with varying degrees of concretisation of each of the areas³⁷. Constitutional legality, as O. N. Gromova emphasises, begins not when the rights are restored by the decisions of the competent authorities, but when any authority begins its activities with the compliance with the Constitution and its observance³⁸.

Constitutional legality is a universal legal principle of the constitutional order of the state, on which the organisation and activity of all bodies of state power, local self-government bodies, public organisations, and individual citizens are based. In the most general form, this principle can be formulated as a general requirement that reflects the need (necessity) of lawful conduct (activity) of all subjects of constitutional and legal relations³⁹. This means that the adoption, implementation and application of the rule of law should take place only based on the Constitution and laws of Ukraine. The principle of constitutional legitimacy finds its concretisation in its universality, guarantee (security), unity and reality, which are clearly manifested in the activities of public authorities⁴⁰. The specified general obligation of the constitutional

³⁵ I.A. Yashina, *The principle of legality in court proceedings: Constitutional interpretation*, Saratov State Law Academy, Saratov, 2015.

³⁶ Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

³⁷ O.N. Gromova, "Constitutional legality and its provision in the Russian Federation", in *Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia*, 2011, vol. 4, no. 20, p. 20–23.

³⁸ S.A. Avakyan, *Constitution of Russia: Nature, evolution, modernity*, Russian legal publishing house, Moscow, 1997; J. Waldron, "Are Constitutional Norms Legal Norms?", in *Fordham Law Review*, 2006, vol. 75, no. 3, article number 24.

³⁹ D. Radomska, "Constitutional and legal regulation of organization and activity of city government bodies in Ukraine", in *Scientific Journal of the National Academy of Internal Affairs*, 2021, vol. 120, no. 3, p. 71-76.

⁴⁰ Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

legality in a broad sense forms method of realisation of the purposes and tasks of the state activity (they can be ways and means of this activity).

The Constitution and constitutional legality are truly interdependent concepts. Constitutional legitimacy is undoubtedly generated by a factor of the constitution. However, the essence of constitutional legality is not only (and not so much) the fact of the existence of a legal constitution. Historical experience contains many examples of how non-legal, totalitarian political regimes were developed in the presence of de jure constitutions (which exist), which asserted a different order of public life than provided by the same de jure constitution⁴¹. An example can be the experience of Ukraine after the decision of the Constitutional Court of Ukraine on September 30, 2010⁴², which actually changed the constitutional order contrary to the Fundamental Law of Ukraine (without a referendum), which led to the actual usurpation of power by V. Yanukovych.

Thus, when constitutional legitimacy as a set of ways and methods of achieving the goals and objectives of state activity has not been ensured, the practical implementation of its provisions is that the constitution and public life exist separately from each other. Such cases indicate the formal and legal existence of constitutional legality, not the essence. And then constitutional legality does not exist even with certain reservations. The principle of legality comes to the fore, in which all state bodies from the legislator, the legislator to the law enforcer proceed exclusively from the letter of the law, without consideration of the spirit of the latter. An example is the effect of the provision of the Constitution of the USSR and its union republics with the dominance of the principle of socialist legality⁴³. In Soviet legal science, the identification of law and right was an ideological necessity, because since ancient times it was believed that justice is an objective property of law, so the rule of law, established by the laws applied by the government, had to be recognised as fair. At that time, the paradigm of Soviet public administration presupposed not only a positivist understanding of law, but also the supremacy

⁴¹ Sh.M. Nuradinov, V.I. Chervonyuk, B.M. Kurbanov, "Constitution and constitutional legality", in *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, 2013, no. 6, p. 35–39.

⁴² Decision of the Constitutional Court of Ukraine No. 20-rp "On the conformity of the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 No. 2222-IV (case on observance of the procedure of amending the Constitution of Ukraine), 2010. Available at: <https://zakon.rada.gov.ua/laws/show/v020p710-10>.

⁴³ O.V. Stogova, I. Pasek, D. Kovac, "Reform of public power in the Slovak Republic: Achievements and prospects", in *Legal Horizons*, 2021, vol. 14, no. 2, p. 50-55.

of the state over the right and the corresponding right to human, their rights and freedoms⁴⁴.

Transformations of constitutional regulation after Ukraine's independence changed the paradigm of constitutional legal understanding. It is based on the idea that constitutional regulation should ensure the increase of the right over the state and state discretion. It is impossible to identify law as an objective substance with the law, which may reflect the subjectivism of the will of state power⁴⁵. Constitutional legality is the core of the principle of legality, if one is to consider the latter comprehensively, it is the highest level of manifestation in state and public life. With this in mind as a category of "separate order", it has all the properties, features that are inherent in the law as a whole, and at the same time differs in a set of special characteristics that allow to consider it as the highest layer of legality⁴⁶.

The precondition for constitutional legality is the existence of constitutional legislation (this refers to laws, the adoption of which is provided by the provisions of the Constitution, as well as other regulations, the content of which must comply with the Fundamental Law). Therewith, the quality of the legal framework is important, namely: the lack of conflict between the content of regulations, the unambiguity of the terminology used, the high quality and uniformity of law enforcement activities. The absence of certain laws, the adoption of which is provided by the Constitution, indicates a violation of its provisions⁴⁷. This, in turn, describes state power as violating the regime of constitutional legality.

The main sphere of manifestation of constitutional legality is the practical activity of subjects of law. In modern society, it has a real nature, and its ensuring is described by a system of socio-economic, political, ideological, and legal guarantees specially developed by the state for these purposes⁴⁸. They become especially important in the case of complex application. It is in this case that the maximum opportunities are created for the implementation of the will of the entire Ukrainian people, which is embodied in constitutional provisions⁴⁹. Constitutional legality as a method and purpose of the activity of

⁴⁴ A.A. Liverovsky, "Rational model of constitutional regulation", in *Lex Rossica*, 2019, vol. 1, 146, p. 70–82.

⁴⁵ A.N. Kokotov, "Constitutional law in Russian law", in *Actual Issues of Russian Law*, 2014, vol. 10, no. 47, p. 2161–2168.

⁴⁶ O. Gulac, A.V. Shcherbak, "Public administration in the activity of the court apparatus: approaches to the formation of concept", in *Law. Human. Environment*, 2021, vol. 12, no. 2, p. 101-109.

⁴⁷ N.M. Parkhomenko, "Constitutional legality as a goal, requirement and legal regime: Theoretical aspects", in *Almanac of Law*, 2012, no. 3, p. 38-41.

⁴⁸ M.I. Baytin, *The essence of law (modern normative rule of law and the verge of two centuries)*, SGAP, Saratov, 2001.

⁴⁹ I.A. Yashina, *The principle of legality in court proceedings: Constitutional interpretation*, Saratov State Law Academy, Saratov, 2015.

public authorities lies, apart from its guarantee, in its all-encompassing action and stability. This means strict observance of the constitution: in the process of directly implementing the provisions of the Constitution; in the process of law-making activity of authorised bodies of state power; in the process of law enforcement activities of the subjects of public relations.

In this regard, N. M. Parkhomenko emphasises that the law-making and law-enforcement process should take place exclusively on the basis of the Constitution and laws of Ukraine. In particular, during legislative activity, especially law-making, all stages of the law-making process must take place in accordance with the provisions of the Constitution of Ukraine and other relevant laws. Monitoring of the legislative array should be constant to make objectively necessary changes and additions in a timely manner, eliminate contradictions and systematise regulations. According to N. M. Parkhomenko, law enforcement process is the activity of the subjects of public relations for the implementation, use, observance and, especially, application of the law, should also take place in accordance with the Constitution and laws of Ukraine⁵⁰. Continuing the opinion of the scientist, the nature of public and state life requires strict observance and implementation of current legislative and other provisions, among which a special place is given to the requirement of observance and implementation of the Fundamental Law. After all, the Constitution is the main source of law and is a measure of the introduction of legality in the lives of all participants in public relations. Recognition of the provisions of the Constitution in routine life, ensuring its supremacy in the system of current law throughout the state is a practical manifestation of constitutional legality.

Furthermore, in this context, the constitutional legitimacy is closely linked to democracy, and also follows from its manifestation as a principle of the constitutional order. Democracy presupposes the duty of all state bodies and branches of government and their officials to abide by the constitution and to act jointly and in accordance with the law. The stability of democracy is determined not only by the creation of a constitution that meets high standards (including the Constitution of Ukraine) or the demands of society and social classes, nations and peoples, groups to the institutions of the constitutional order. In turn, it is the democratic regime, in which the principles of⁵¹ democracy are most fully implemented, is the basis and necessary condition for establishing and maintaining true constitutional legitimacy – the regime of

⁵⁰ N.M. Parkhomenko, “Constitutional legality as a goal, requirement and legal regime: Theoretical aspects”, in *Almanac of Law*, 2012, no. 3, p. 38-41.

⁵¹ B.S. Ebzeev, *Constitutional state. Constitutional Court, Zakon i pravo*, Yuniti, Moscow, 1997.

behaviour and activities of government institutions, structures based on the legal Constitution⁵².

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The connection between constitutional legality and democracy can also be traced in the fact that the establishment of constitutional legality is possible only by democratic means. It is obvious that an order in a society that is not based on the rule of law can be achieved without the rule of law. By establishing and maintaining order in society by illegitimate means, the state denies democracy, neglects the rights and freedoms of citizens. With the restoration of order, the level of constitutional legality sharply decreases. Inextricable link with democracy connects constitutional legitimacy with human rights, democratic manifestation, humanistic orientation of state activity⁵⁵.

Constitutional legality as a special legal regime

The above allows to identify the following manifestation of constitutional legality – as a special legal regime that permeates all social relations: from the creation of the constitution to law enforcement during the restoration of any branch rights of individuals. The regime of constitutional legality makes provision for the direct effect of the provisions of the Constitution. This means that any subject of constitutional and legal relations can be directly guided in its activities by the provisions of the Fundamental

⁵² N.M. Parkhomenko, “Constitutional legality as a goal, requirement and legal regime: Theoretical aspects”, in *Almanac of Law*, 2012, no. 3, p. 38-41.

⁵³ B.S. Ebzeev, *Constitutional state. Constitutional Court*, Zakon i pravo, Yuniti, Moscow, 1997.

⁵⁴ N.M. Parkhomenko, “Constitutional legality as a goal, requirement and legal regime: Theoretical aspects”, in *Almanac of Law*, 2012, no. 3, p. 38-41.

⁵⁵ Sh.M. Nuradinov, V.I. Chervonyuk, B.M. Kurbanov, “Constitution and constitutional legality”, in *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, 2013, no. 6, p. 35–39.

Law and on their basis apply to the relevant institutions to protect their rights and freedoms. The presence or absence of provisions of laws or by-laws that develop the provisions of the provisions of the Fundamental Law does not mean that the provisions of the Constitution have lost their direct regulatory nature. Constitutional provisions must be applied regardless of whether they are clarified and specified by other provisions of law or not⁵⁶.

Proceeding from the definition of constitutional legality given above, its provision is one of the key conditions for the implementation of the principle of legality in general and the establishment of such a rule of law that would meet the requirements of legality. Indeed, if the principle of legality means compliance of bylaws with the constitution of the state, a clear definition of the legal status of the main participants in legal relations, which makes provision for the establishment of competence of public authorities, as well as unambiguous consolidation of human and civil rights and freedoms together with their guarantees, then, evidently, its implementation is neither practically nor theoretically impossible in the absence of constitutional legitimacy⁵⁷. Therefore, constitutional legality is a kind of basis and imperative condition (*condictio sine qua non*), which allows the implementation of the principle of legality. The existence of a holistic and structured system of legislation envisaged by the principle of legality is possible only if it is based on a solid constitutional foundation, which often contains provisions-principles that determine the general direction of development of the system of legislation⁵⁸.

This is a manifestation of constitutional legality as an appropriate legal regime, because the Fundamental Law in its provisions-principles, provisions-prescriptions, provisions-prohibitions and legal provisions themselves, which form certain rules of conduct lays the ground (basis) for other laws, codes, and acts of bylaws and regulations. Naturally, each act of a lower level details and reveals the provisions of the Constitution, which from the outside may look like certain restrictions on the rights and freedoms of human and citizen. However, in our opinion, in such cases it is generally a matter of concretising the provisions of the Constitution, and the key is to observe the constitutional regime – the legal idea, the principle enshrined in the Fundamental Law. If this requirement is not met, and this can be traced at different stages of the mechanism of legal regulation (from law-making to judicial enforcement), the principle of legality remains formal, but in essence the regulation is

⁵⁶ Yu.V. Tkachenko, “Constitutional legality as a principle of the constitutional order”, in *Forum Prava*, 2010, no. 4, p. 875–883.

⁵⁷ O.V. Skrypnyuk, O.V. Kmyta, “Constitutional legality, as the basic provision of the principle of legality in Ukraine”, in *Almanac of Law*, 2016, no. 7, p. 20–25.

⁵⁸ *Ibidem*.

constitutionally defective and constitutional legality as a legal regime is not ensured.⁵⁹

One of the features of constitutional legitimacy as a regime is the stability of constitutional legislation. The stability of constitutional legislation and the practice of its application, as emphasised by Yu. V. Tkachenko, has its expression in the stability of legal regulation of fundamentally important social relations, in the absence of fluctuations in the practice of consideration and resolution of legal cases by authorised bodies. Stability is revealed as the stability of current legislation, the absence of sharp fluctuations in law-making policy, immutability, which implies unity in the understanding and application of legal provisions⁶⁰. Unfortunately, for Ukraine, as well as for other individual countries in transition, such a situation is a desirable goal rather than a reality. Thus, the Ukrainian constitutional legislation is not stable, given a number of permanent reforms not only in the constitutional regulation of the legislative level, but also in frequent and rather unsystematic amendments to the Constitution of Ukraine, for example only during 2019. In particular, the Verkhovna Rada of Ukraine submitted to the Constitutional Court of Ukraine nine appeals for amendments to the Fundamental Law of Ukraine, which concerned both various and related subjects of constitutional regulation. However, each appeal was made independently. This is a special manifestation of the so-called "constituent spam", which objectively further destroys the stability of the constitutional matter of the highest level – the Fundamental Law of the state.

Therewith, the necessity of modernising the Constitution is undeniable, but amendments to it should be systematic, balanced, after extensive discussion with representatives of civil society and specialists in various fields. A similar situation with the problems of acts of constitutional legislation (regardless of their names, but only in areas): the organisation of Parliament, the impeachment of the President of Ukraine, the introduction of the Rome Statute, the organisation of a single body of constitutional jurisdiction, etc.

The study agrees that the stability in legislative policy should not lead to the lag of legal regulation from the needs of social development, and thus to conservatism in legislative activity⁶¹. On the other hand, too high activity of the parliament negatively affects the state of constitutional legality leads to conflicts in the process of their implementation and application, causes difficulties in finding current rules of law, and thus stimulates objective conditions for misunderstanding and application of legislation. The stability of

⁵⁹ M. Rojszczak, "Surveillance, legal restraints and dismantling democracy: Lessons from Poland", in *Democracy and Security*, 2021, vol. 17, no. 1, p. 1-29.

⁶⁰ Yu.V. Tkachenko, "Constitutional legality as a principle of the constitutional order", in *Forum Prava*, 2010, no. 4, p. 875–883.

⁶¹ I. Matyash, "The first woman in a leading position in foreign policy Department of the Ukrainian People's Republic", in *Foreign Affairs*, 2021, no. 3-4, p. 42-47.

the constitutional legal framework creates conditions for the unambiguous implementation of its requirements by all state and public bodies and their officials. Lack of stability in law enforcement processes, fluctuations in the application of legal provisions always have a negative impact on the rule of law⁶². The interrelations between society and the state, between public authorities and the population, etc., which are based on the Constitution and the law, in the broadest meaning, is described as a regime of socio-political life. In this case, constitutional legality acts as a tool for regulating public relations to ensure the rights and freedoms of the individual by creating a strict regime of compliance with the Constitution and laws of Ukraine of every socially significant action (inaction) of constitutional law, especially higher authorities and officials, on which the Fundamental Law of Ukraine directly imposes the obligation to approve and ensure human rights and freedoms and their guarantees (Part 2 Article 3 of the Constitution of Ukraine)⁶³.

The constitutional legality regime is not formed automatically. A natural process for transit states (i.e. those that are only striving to become countries of stable democracy) are the facts of violation of constitutional provisions by various subjects of state power. That is, the constitutional regulation in the states of the transitional period (to which Ukraine belongs) may fail in implementation. Since the object of constitutional offences is social relations that mediate high social values – human and civil rights and freedoms, democracy, sovereignty, in order to implement the requirements of constitutional legality in parallel with the observance of the Constitution of Ukraine by all subjects of law, its protection by state public authorities and civil society institutions is necessary⁶⁴.

Considering these circumstances, the state creates a system and mechanisms for legal protection of the Constitution. The legal protection of the Constitution is traditionally understood as a set of components that ensure the stability and strict implementation of basic legal provisions⁶⁵. A special role in this aspect is played by constitutional means of protection, among which constitutional control is singled out, the highest form of which in post-socialist and domestic legal literature is constitutional justice. In the process of its activity, the Constitutional Court of Ukraine is de-facto engaged in the universalisation of constitutional values, their extension to the law-making and law-enforcement spheres, to institutions of various branch orientation, which

⁶² *Ibidem*.

⁶³ N.M. Parkhomenko, “Constitutional legality as a goal, requirement and legal regime: Theoretical aspects”, in *Almanac of Law*, 2012, no. 3, p. 38-41.

⁶⁴ V. Bukach, N. Kaminska, L. Medvid, “Institutional guarantees of constitutional political rights and freedoms of persons and citizens in Ukraine”, in *Law Journal of the National Academy of Internal Affairs*, 2021, vol. 14, no. 1, p. 39-46.

⁶⁵ N.P. Ivanshiceva, *Constitutions of foreign socialist countries – laws of the highest historical type: Thesis of the doctor of law sciences*, Pushkin Leningrad State University, Leningrad, 1979.

significantly contributes to the constitutionalisation of public life and the legal order⁶⁶.

Constitutional legality as a legal regime forms the constitutional legal order. The latter, in turn, is the core of the general legal order, represents a state of regulation (orderliness) of social relations, which are mediated by constitutional prescriptions⁶⁷. This is the state of social relations to which society strives by creating a real rule of law in social life, establishing actuality and implementation of the Constitution. The rule of law is directly related to the implementation, performance of constitutional guidelines. The rule of law is a state of political, socio-economic and other relations based on the Constitution of the state, embodied in the constitutional order. The constitutional legal order is a regime of legality in action or, figuratively speaking, "an implemented legality"⁶⁸.

Constitutionality is a systemic phenomenon that finds its manifestation in two main structures. First of all, according to the scientist, this refers to the system-structural organisation and semantic and substantive content of the Constitution itself, as well as the legal system, which should be understood as the entire set of existing regulations and activities of legal entities to implement them. It is a property of the Constitution and acts as a set of recognised universal values enshrined in the Fundamental Law and guaranteed by the state⁶⁹. On the other hand, constitutionality is a property of legal acts, the essence of which is to require compliance of all adopted acts and their rules with certain fundamental principles, and at the same time, the "spirit" of the Constitution as a whole. While ensuring the true compliance of national legislation with the Constitution, its content, content and textual content, as well as the implementation of law enforcement activities by participants in relevant relations, including in the administration of justice, is the most important means of establishing and maintaining constitutional legality. This regime cannot exist in objective reality separately from the general system of legality, its allocation is possible only to achieve the goals of scientific cognition. Constitutional legality as a state of public life is an integral element, a characteristic feature, the highest layer of legality⁷⁰.

⁶⁶ N.S. Bondar, "Constitutional justice as a factor in the modernization of Russian statehood", in *Journal of Russian Law*, 2005, no. 11, p. 15-30; I.A. Yashina, *The principle of legality in court proceedings: Constitutional interpretation*, Saratov State Law Academy, Saratov, 2015.

⁶⁷ Sh.M. Nuradinov, V.I. Chervonyuk, B.M. Kurbanov, "Constitution and constitutional legality", in *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, 2013, no. 6, p. 35–39.

⁶⁸ *Ibidem*.

⁶⁹ I.A. Yashina, *The principle of legality in court proceedings: Constitutional interpretation*, Saratov State Law Academy, Saratov, 2015.

⁷⁰ *Ibidem*.

Conclusions

This study considered conceptual approaches to highlighting a special feature of laws that affects the development of a democratic constitutional order – constitutional legality. The nature of public and state life requires strict observance and implementation of existing legislative and other provisions, among which a special place is given to the requirement of observance and implementation of the provisions of the Fundamental Law. After all, the Constitution is the main source of law and is a measure of the introduction of legality in the lives of all participants in public relations. Recognition of the provisions of the Constitution in routine life, ensuring its supremacy in the system of current law throughout the state is a practical manifestation of constitutional legality.

The study elaborated on the legal nature and essence of constitutional legality as a special property of law, which can be recognised as legal, and stated that there are few definitions of constitutional legality in doctrine. It is proved that constitutional legality is a complex social and legal phenomenon, which has relatively independent features and is a property objectively inherent in the social order of a democratic state. That is, constitutional legitimacy is closely connected with democracy, it also follows from its manifestation as a principle of the constitutional order.

It was determined that constitutional legitimacy is a really functioning system of constitutionalism, a complex phenomenon, which lies in strict observance of the constitution and its provisions during its direct action and law enforcement by all public authorities, public organisations, officials of all levels and citizens, courts and is an integral feature of the constitutional order as an integral part of the rule of law. It is through constitutional legality that the principle of legality is fully implemented. The stability of legislation enhances the effectiveness of the regime of constitutional legality, which, unfortunately, is absent in transition countries.

The practical significance of constitutional legitimacy is manifested through its feature – a special legal regime that permeates all social relations: from the creation of the constitution to law enforcement during the restoration of any branch-related rights of individuals. Its ensuring lies in the direct effect of the provisions of the Constitution, as each subject of constitutional and legal relations can be directly guided in its activities by the provisions of the Fundamental Law and on their basis apply to the relevant institutions to protect their rights and freedoms.