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ФОРМУВАННЯ КОМПЛЕКСУ ЗАХОДІВ РОЗВИТКУ ЕКСПОРТНОГО ПОТЕНЦІАЛУ УКРАЇНИ

Анотація

Досліджено сучасний стан експорту України. Розглянуто закордонний досвід розвитку експортного потенціалу країни. Обґрунтовано необхідність модернізації транспортної системи загалом та морської галузі зокрема для збалансованого розвитку експорту України. Визначено пріоритетні напрями розвитку морської галузі. Запропоновано комплекс заходів щодо розвитку експорту України.

Ключові слова: експортний потенціал, зовнішньоекономічний потенціал, транспортна система, морська галузь, морські порти, судноплавні компанії, суднобудівні підприємства.

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ФОРМИРОВАНИЕ КОМПЛЕКСА МЕРОПРИЯТИЙ РАЗВИТИЯ ЭКСПОРТНОГО ПОТЕНЦИАЛА УКРАИНЫ

Аннотация

Исследовано современное состояние экспорта Украины. Рассмотрен за-рубежный опыт развития экспортного потенциала страны. Обоснована необходимость модернизации транспортной системы в целом и морской отрасли в частности для сбалансированного развития экспорта Украины. Определены приоритетные направления развития морской отрасли. Предложен комплекс мероприятий по развитию экспорта Украины.

Ключевые слова: экспортный потенциал, внешнеэкономический потенциал, транспортная система, морская отрасль, морские порты, судоходные компании, судостроительные предприятия.

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BASIC PRINCIPLES OF UKRAINIAN CONSTITUTIONALISM IN THE EUROPEAN DIMENSION

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The article is dedicated to the essence and the functional links between the rule of the, the supremacy of human rights and the constitutional democracy as of the main principles of the European constitutionalism during the European integration. The author states that nowadays these principles gain the huge value to Ukraine because of the country's aim to form the democratic society and the state with the rule of law using the European standards and values.

Keywords: constitutionalism, principles of the European constitutionalism, rule of law, human rights, constitutional democracy, constitutional reforms, European values and standards.

Scientific and practical problem. The current stage of the constitutional reforms in Ukraine aims to democratize the state regime based on the main European values. In order for the European integration to become efficient, it is advisable to constitutionalize all of the processes, related to the harmonization of the Ukrainian legislation with the European standards.

The constitutionalism is grounded on a number of basic principles by mankind, which has become world standards when it comes about building a democratic state and civil society. These principles are the foundation of constitutionalism system. They should provide a stable and progressive

development of institutions of constitutionalism and act as a basic regulatory framework functional mechanism of Ukrainian constitutionalism. The principles of constitutionalism were designed to ensure the establishment, development and operation of institutions of constitutionalism system. Their theoretical and practical purpose is difficult to overemphasize.

The theoretical purpose of the principles is that they encourage content constitutionalism, giving it integrity and a single focus, because all elements – elements of the constitutionalism (constitution and constitutional law, constitutional legislation, constitutional justice and constitutional order) – ac-

curately reflect these principles, base themselves on them. These same principles are fundamental for the institutional and regulatory system constitutionalism.

The practical purpose of the principles of constitutionalism is their direct impact on the constitutional reality of the need for their use in shaping the regulatory framework (constitutional law) and functional mechanism of constitutionalism, as well as the organization and implementation of public power as its institutional component, targeted to meet an objective of modern constitutionalism – security and protection of rights and freedoms.

Overview of the relevant researches. The research is based on the author's monograph at this topic; also the works of S.V. Holovatyy and I. Pernice are cited.

Article's thesis. Considering the fundamental provisions of the principles of law, this gives grounds to define the principles of constitutionalism as the basic ideas, steady basis that adequately reflect the legal and social values accepted by society at this stage of its development, reflect the essence of modern Ukrainian constitutionalism and the practical functioning of the purpose of limitation (self-limitation) by the public authorities in favor of civil society, rights and interests of the individual to achieve constitutional and legal freedoms. The article shows how the most important principles of constitutionalism can be developed in Ukraine further, using the European experience.

The main part. Today, the principles of constitutionalism that are already included into the Ukrainian legislation, include the principle of sovereignty, the principle of democracy, the principle of priority of human rights and freedoms, the rule of law, the principle of separation of public power for the state and self-governing (local government), the principle of division of powers into legislative, executive and in the presence of judicial checks and balances and so on. Regarding the current political trends is fair to conclude the perception of the European constitutionalism's fundamental principles by the Ukrainian constitutionalism. Among these principles S.V. Holovatyy distinguishes the rule of law, democracy and human rights [1]. It is interesting, that among these fundamental principles the one about the human rights takes the first place. The other two principles are vital because the constitutional experience of foreign countries argues: the rule of law and democracy are the important factors in ensuring of the proper level of security and protection of human rights. This helps to achieve the purpose of modern constitutionalism.

In practice the principles of constitutionalism are a "litmus test" to verify the compliance of the national constitutional law and political, legal and social realities of the European standards. Such a conclusion was made because the practical purpose of the principles of constitutionalism is the direct impact on the constitutional realities; they have to be used for the formation of a regulatory framework (constitutional law) and of the functional mechanism of constitutionalism, as well as for the organization and implementation of public power as its institutional component.

The content of the Constitution includes provisions relevant in content to European legal stan-

dards and, therefore, the principles of European constitutionalism.

For example, in the text of the Constitution of Ukraine, in particular in the Preamble states that the Constitution of Ukraine adopted in accordance with the expression of the sovereign will of the people, and the people are the only source of power and the repository of sovereignty in Ukraine. The status of the people as a sovereign of power (Art. 5 of the Constitution of Ukraine) through a system of guarantees for the recognition and of the principle of the rule of law (Art. 8 of the Constitution), the democratic organization of public authorities (Art. 5, 7 of the Constitution), as well as the recognition of man as the highest social value (Art. 3 of the Constitution). Thus, the essence of the constitution can be traced as a manifestation of the constituent power of the Ukrainian people, when approving the rule of liberal-democratic values. In addition, contains rules regarding: respect for human rights (Articles 21-22 of the Constitution), the right to life (Art. 3, 27 of the Constitution), the prohibition of torture (Art. 28 of the Constitution), the right to a fair trial proceedings (Art. 55 of the Constitution), the imposition of punishment only in accordance with the law (Art. 58, 61 and 62 of the Constitution), freedom of peaceful assembly and freedom of association (art. 36, 39 of the Constitution), the right to an effective way of legal protection (Art. 59 of the Constitution), the right to free elections (Art. 38 of the Constitution), the right to freedom of movement and choice of residence (art. 33 of the Constitution of Ukraine) and others.

According to the Venice Commission "For Democracy through Law", the principle of the rule of law is clearly reflected in the text of the Constitution of Ukraine. The establishment of democratic local self-government, as well as allocating the important role of the Constitutional Court of Ukraine should contribute to the creation of a democratic culture in Ukraine [2]. In conclusion "On the constitutional situation in Ukraine" dated December 17, 2010 indicated achieve Ukrainian constitutionalism, which correspond to the European democratic values [3].

The problem is the low level of actual Europeanization of the constitutional order in Ukraine is in the wrong practice of applying and implementing these principles and European standards in the modern constitutional and legal practice.

It is not only binding set of principles of constitutionalism in the legislation in line with European standards, but is their understanding that meets the latest European trends and contribute to the adaptation of these principles to the current constitutional and legal realities. The formulation of the concepts and principles of disclosure of the contents of constitutionalism is of great importance for the formation of a holistic concept of Ukrainian constitutionalism. The theory of constitutionalism, because of their importance for the further improvement of Ukraine's European integration process constitutionalization requires purity of concepts and their specificity, approximate as possible to mathematical precision.

A special place in the system of the principles of constitutionalism takes the rule of law, which

is the exclusive political and legal ideal of modern society. The support for this principle is uniquely comprehensive, as for the rule of law serves all, almost without exception, the countries, despite the differences in their economic, political and legal systems.

The Constitution and laws of Ukraine, as well as a number of international treaties, one of the parties acts Ukraine, reflects the principle of the rule of law. In Part 1 of Art. 8 of the Constitution of Ukraine proclaims that "Ukraine is recognized and the principle of the rule of law". This principle lies at the heart of public authorities (Part 1 of Art. 3 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine", Art. 3 of the Law of Ukraine "On Local State Administrations", p. 4 of the Law of Ukraine "On the Constitutional Court of Ukraine", Preamble Law of Ukraine Art. 2, ch. 1, Art. 6 "On the Judicial System and Status of Judges", p. 1 hr. 1, Art. 7, Art. 8 of the Code of Administrative Procedure of Ukraine).

The rule of law is essential for Ukraine, which aspires to the formation of a democratic society and the rule of law in line with European standards of the state.

However, the institutions of the European Union have repeatedly, particularly in a number of evaluation documents on Ukraine's readiness for signing the Association Agreement with the EU and the progress in implementing reforms in the way of further integration was determined that the achievement of Ukraine, in particular in the field of rule of law is a prerequisite for the further development of relations between Ukraine and the EU, emphasized the fundamental shortcomings of Ukrainian justice system, which adversely affected the protection of individual human rights and the rule of law [4], also noted that there are shortcomings in the reform of the electoral and legal systems [5].

Undoubtedly, the rule of law as a fundamental value of the European Union must be respected and adhered to in the country, which is integrating in the EU, at least at a level close to its implementation in the countries-founders of European democracy. However, an analysis of the content of these documents of the EU towards Ukraine is seen the neglect of the fact that the rule of law is a political and legal ideal as the entire international community and individual states.

Obviously, that is not conducive to improving the situation and the fact that neither the legal literature, nor in legal sources, there is no single unified definition of the rule of law.

The rule of law is a political and legal condition in which the public power institutions of the state, civil society and other social actors operate solely on the basis of the right (in its integrative understanding), thus achieving a state of harmonious combination of power, justice and freedom, the only measurement who has the right, and to create a sustainable system of law enforcement that ensures respect for and protection of human rights and freedoms.

According to the theory of modern constitutionalism, the rule of law is determined in the context of restrictions (self-restraint) of the public (state and public self-governing) authority in favour of

the interests of civil society, the rights and freedoms of man and citizen.

The definition of the principle of the rule of law through the constant restriction of arbitrary power of the state is considered as one of the leading and due to the fact that the principle of the rule of law has arisen to address the fundamental issues of constitutional law – the implementation of proper control over the state coercion with respect to individuals.

The rule of law as a principle of modern Ukrainian constitutionalism provides a promising direction of development of the Ukrainian society. At the same time, the "rule of law" is a dynamic phenomenon, which can be filled with new content in connection with possible socially conditioned changes in the content of the law that is the appearance of new values, customs and traditions, which are not known to occur and disappear immediately. Hence, one can predict that the definition of this principle will continue to evolve and be filled with the updated content at each stage of development of society. It is important that the rule of law would be the rule of truth and justice.

Based on the above understanding of the content of the rule of law, the basic directions of measures to comply with the rule of law in the context of implementation of European standards in the modern conditions of the constitutional process in Ukraine is to reform the institutions of public authority (in the context of democratization, which is associated in particular with the implementation of the principle of constitutional democracy in modern domestic constitutional and political realities) and approving and ensuring human rights and freedoms.

In its essential definition in the context of the theory and practice of European constitutionalism and the rule of law is closely related to the principle of priority of human rights, which reflects the priority of human rights in the relationship "man – society – state" and the duty of the state to recognize, respect and protect these rights. However, these principles are not identical.

The Constitution emphasizes the desire of the most secure and guarantee human rights and freedoms. Thus, according to its preamble, one of the main motives for the adoption of the Basic Law of Ukraine was the need to "ensure that human rights and freedoms" (paragraph 4 of the preamble of the Constitution). In addition, an analysis of Article 3 of the Constitution, which provides that "a person's life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value," and that "human rights and freedoms and their guarantees determine the content and focus of the State", also allows to state a constitutional distinction between the rule of law and supremacy of human rights.

A similar trend is observed in the other branches of law's legislation. For example, the principle of "priority (the rule of) human rights", as an independent principle of the local state administrations as set forth in the Law of Ukraine of April 9, 1999 "On local state administrations" (v. 3). The priority of the natural rights of man stands out as an independent principle and the Constitutional Court of Ukraine. In particular, the legal position,

which formulated them in the Decision № 2-rp of January, 29, 2008 (the case of the release of people's deputies of Ukraine from other posts in the case of combination) states that "the priority of the natural rights of man should be considered as one of the fundamental the principles of the Constitution of Ukraine, according to which the Verkhovna Rada of Ukraine, as a legislative body should adopt legal acts, following such an approach" [6].

Therefore, it is necessary in the principles of constitutionalism distinguish between the content and the intended purpose of the rule of law and supremacy of human rights.

It is very important in the context of European integration to percept and implements the values of democracy.

The democracy as a principle of modern Ukrainian constitutionalism has a complex nature, multifaceted and multidimensional sense of the expression, allows us to offer to refer to the principle of a verbal structure as a "constitutional democracy". With democratic and legal essence of constitutionalism and objectives derive two criteria (constant) constitutional democracy, that is the inherent characteristics (specific properties) – it is constitutional and legal rights and freedom of people power. Based on them, are determined by the political and legal nature and form of manifestation (objectification) of the principle of constitutionalism.

The constitutional democracy is objectified in such phenomena and forms: 1) democratic constitution as an act of constituent power of the people, its ultimate validity and stability; 2) the constitutional and democratic form of organization of public power, in which power belongs to the people (democracy), in conjunction with the legal system of legal restrictions, enshrined in the state constitution to limit the public authorities. This system of legal restrictions should be expressed: to consolidate the constitutional level, the rule of law; in recognizing the priority of international law over national law, to perform the function of not only the internal (national), and the outer limits of the legal authorities; in

the presence of an independent constitutional review by the legislative acts that have been taken by the representative body of the people, to consolidate the principle of separation of powers; in recognizing and guaranteeing local self-government; in recognition of a person of higher social value; to limit the power of "sovereign state" human rights and freedoms, with priority over the other collective, corporate, etc.; 3) the constitutional and democratic state regime under which provided the principle of the election of the representative bodies of the people of the state; implementing the principle of separation of powers; state power is based on a free and equal participation of citizens and their associations in the government; the functioning of local self-government as a manifestation of the principle of decentralization and deconcentration of public administration of public authority; management and resolution of social and political conflict through negotiation and compromise; maintenance and protection of the rights and freedoms of man and citizen in accordance with international standards of human rights; 4) the democratic ways and methods of public authorities on the basis of law. In case of conflict between the government and the person of their decision should exercise independent, democratic court on the basis of the principles of the rule of law and supremacy of human rights.

The conclusion and the perspectives for the further researches. The current period of constitutional reforms in Ukraine is characterized by the activation of the perception of the principles of European constitutionalism and by the active research of the tools and guidelines for their practical implementation in the political-legal realities for the realization of the main goal of the Ukrainian constitutionalism, harmonious integration of its nationally identical characteristics with the principles of the European constitutionalism. The perspectives for the further researches seems to be in the field of distinguish between the content and the intended purpose of the rule of law and supremacy of human rights.

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ОСНОВНИ ПРИНЦИПИ УКРАЇНСЬКОГО КОНСТИТУЦІОНАЛІЗМУ В КОНТЕКСТІ ЄВРОПЕЙСЬКОГО ВИМІРУ

Анотація

У статті розкрито зміст та функціональний взаємозв'язок принципів верховенства права, верховенства прав людини та конституційного демократизму як основних принципів українського конституціоналізму в контексті процесів євроінтеграції України. Визначено, що в сучасних умовах конституційних перетворень ці принципи набувають надважливого значення для України, що прагне формування демократичного суспільства і правової держави відповідно до європейських стандартів та цінностей.

Ключові слова: конституціоналізм, принципи українського конституціоналізму, верховенство права, права людини, конституційний демократизм, конституційні перетворення, європейські цінності та стандарти.

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ОСНОВНЫЕ ПРИНЦИПЫ УКРАИНСКОГО КОНСТИТУЦИОНАЛИЗМА В КОНТЕКСТЕ ЕВРОПЕЙСКОГО ИЗМЕРЕНИЯ

Аннотация

В статье раскрыто содержание и функциональная взаимосвязь принципов верховенства права, верховенства прав человека и конституционного демократизма как основных принципов украинского конституционализма в контексте процессов евроинтеграции Украины. Констатировано, что в современных условиях конституционных преобразований эти принципы приобретают важнейшее значение для Украины, которая стремится к формированию демократического общества и правового государства в соответствии с европейскими стандартами и ценностями.

Ключевые слова: конституционализм, принципы украинского конституционализма, верховенство права, права человека, конституционный демократизм, конституционные преобразования, европейские ценности и стандарты.

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MECHANISM FOR ENSURING OF THE RIGHT OF EMPLOYEE TO DIGNITY AT WORK

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The article analyzes the legal nature and content of the right of an employee to dignity at work that will understand his place in the labour rights. It aims to provide an overview of the costs, the causes and consequences of mental ill health in the workplace. This article also focuses on the description of the second report on the application of the provisions of the European Social Charter (revised) that Ukraine has submitted. Formulated proposals designed to ensure more effective personal non-property labour right. Emphasize the critical importance of ensuring the personal non-property labour right by courts of general jurisdiction, supervisory authorities, the Ukrainian Parliament Commissioner for Human Rights.

Keywords: dignity, personal non-property labour rights, moral harassment in the workplace, methods of protection.

The problem. Ensuring effective implementation of the right of employees to the protection of their dignity at work is impossible without overcoming manifestations of moral harassment in the workplace. Category “dignity” as a moral value deeply penetrated into the legal content of the legal system.

The analysis of research work and publications. The most significant contribution to the the re-

search of the concept of legal regulation of the right of employees to the protection of their dignity are the works of legal scholars, such as: N.N. Agarkov, A.M. Aleksandrov, S.S. Alekseev, M.I. Baru, E.A. Yerzhova, A.S. Joffe, I.J. Kiselev, K.D. Krylov, R.Z. Livshits, A.M. Lushnikov, M.V. Lushnikova, S.P. Mavrin, A.F. Nurtdinova, A.S. Pashkov, V. Skobelkin, L.S. Tal, E.B. Khokhlov, L.A. Chikanova,