DOI: 10.19266/1829-4286-2015-01-101-115

Constitutional Reforms and Post-Soviet Transformation in Ukraine: Challenges on the Way to the Rule of Law*

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This article is focused on the role of constitutional reforms on the Post-Soviet transformation of Ukraine. Taking into account that the phenomenon of Post-Soviet transformation is a complex, multidimensional and interdisciplinary one, the article concentrate on its legal aspects discussing the role of the constitutional reforms on the strengthening of the Rule of Law in Ukraine. I argue that the Rule of Law (if understood not as an abstract idea, but as a set of legal principles and values) can serve as a criterion for the assessment of results of legal, political, social and economic developments in the societies in transition. Discussing the notion of 'constitutional reforms' in the context of post-Soviet transformation, 'constitutional reforms' can have two meanings: they can be understood (1) widely, as fundamental changes in the legal system (bringing also the change in political, social and economic systems of the society) and (2) narrowly, as a process of improving the text of the Basic Law. For both cases, developments merely on the legislative level are never sufficient: the changes in ideology, mentality and legal culture are vital to bring the change. The article analyses the constitutional process in Ukraine, posing the question whether the amendments introduced to the Constitution contributed to the strengthening of the Rule of Law. The article concludes that, reforms have not been successful in achieving their goals and that reforms based on new ideological and methodological approaches are required in order to implement the Rule of Law in practice.

Keywords
Rule of Law, post-Soviet transformation, constitutional reforms, legal mentality, separation of powers, Europeanisation.

This is the revised and expanded text of a paper given at the international conference, entitled "The Impact of Constitutional Processes on Post-Communist Transformation" (Yerevan, 2-3 November, 2014).

Introduction. The Rule of Law as a Criterion of Assessment of the Post-Soviet Transformation Processes

Being enshrined in Article 8 of the Constitution of Ukraine[1], the Rule of Law principle, it may be argued, can serve as a good illustration of the processes of post-Soviet transformation through constitutional reforms in Ukraine. The doctrinal approaches to the understanding of its substance, as well as the level of its implementation in practice, can help to indicate the changes in legal mentality of the society comparative to the Soviet period and assess the success of transition to the democratic state based on the internationally recognised legal principles and values.

Although today there is no uniform definition of the Rule of Law[2] (and probably there is no need of such definition taking into account the multidimensional character of this phenomenon), its substance can be defined through its constituting elements (or sub-principles). The list of such components proposed by experts and scholars worldwide is quite extensive; among the most common elements the following are often indicated: respect to Human Rights and fundamental freedoms, supremacy of the Constitution, legal certainty, separation of powers, limitation of discretion, legality, independent judiciary and fair trial, democracy, etc[3].

Such an understanding of the Rule of Law is by itself an indication of transition from the Soviet approach where the Rule of Law was perceived as a rule of the statute, i.e. the rule of the legislative act irrespective of its formal and substantial characteristics, and where an individual with their rights and

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1 The Constitution of Ukraine adopted on 28 June 1996 with further amendments, available at: http://zakon0.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80 (official text in Ukrainian).

2 **Peerenboom R.,** The Future of Rule of Law: Challenges and Prospects for the Field, *Hague Journal on the Rule of Law,* 1, p. 5-14. In Ukrainian legal scholarship, the doctrine of the Rule of Law is developed, in particular, by former Justice of the Constitutional Court of Ukraine Prof. M. Koziubra. **Козюбра М.,** Верховенство права: українські реалії та перспективи, *Українське право*. 2010. 3, С. 7;

3 **Козюбра М.**, Принцип верховенства права і правової держави: єдність основних вимог // Наукові записки НаУКМА, Т. 64, 2007, сс. 3-9.

freedoms did not enjoy the status of the supreme social value. However, in Ukraine this transformation has not been complete: in contrast to the legal academic community, many legal practitioners still perceive this principle in its Soviet-time interpretation and the implementation of the Rule of Law is really far from the ideal.

In one of its judgments, the Constitutional Court of Ukraine provided the definition of the Rule of Law as a "governing of law in a society". The Court stated that the law is not limited to the legislation, but includes also morality, traditions, customs and other social regulations; all these elements are linked between themselves on the basis of the ideology of justice and the idea of law that is embodied in the Constitution. Positive law, in its turn, should reflect the ideas of social justice, liberty, equality etc[4]. However, unfortunately, the Constitutional Court itself does not contribute to the strengthening of the Rule of Law; its case-law is contradictory (this violates the principle of legal certainty and predictability), politically biased and sometimes even unconstitutional[5]. This, in its turn, contributes to the strengthening of constitutional nihilism in the society. The analysis of the legal practice shows that the recognition of the Rule of Law in the text of the Constitution as early as in 1996 unfortunately did not guarantee its implementation in practice. Further constitutional developments did not contribute to the strengthening of this principle either. As one of the leading experts in the field of constitutional reforms noted: "*We have the expertise and the knowledge of democratic reform. But we do not have the supremacy of law*"[6].

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[4] The judgment of the Constitutional Court of Ukraine in case on the conformity of provisions of Art. 69 of the Criminal Code of Ukraine with the Constitution of Ukraine N 15-pn of 2 November, 2004 (Case concerning More Lenient Punishment Handed Down by Courts), available at: http://zakon2.rada.gov.ua/laws/show/v015p710-04 (in Ukrainian).

[5] *Ihor Koliushko*, presentation at the expert discussion "A New Ukraine in the Eyes of Ukrainian Experts", 10 March, 2014, available at: http://www.en.pravo.org.ua/index.php/151-european-integration/560-a-new-ukraine-in-the-eyes-of-ukrainian-experts, (last visited 20.01.2015).

[6] Ibid

What do 'Constitutional Reforms' mean? The scope of the concept in the context of post-Soviet transformation

The concept of constitutional reforms in the context of the post-Soviet transformation, in my opinion, can be understood in a narrow and broad sense. In a narrow sense, the constitutional reforms have formal character and denote elaboration and drafting of the new Constitution or amending the Constitution in force (in this case the term "constitutional process" can be used).

In case of societies in transition, however, the notion of the constitutional reforms cannot be limited to the elaboration or improvement of the text of the Basic Law and the relevant legislation. In such cases, much broader meaning of the constitutional reform is applicable where constitutional reforms comprise the complex changes (or transformations) in the fundamentals of legal, political, social, economic organisation of the state and society. In other words, not only the formal, but also the material constitution of the society significantly changes. Legal developments in this case constitute the basis for the reforms in all other fields.

Such legal changes, in their turn, are also not limited to the changes of the text of the Constitution. In this broader context, the accession of the state to some of the international treaties (e.g. Human Rights treaties or treaties establishing supranational organisations) could also mean significant changes in its legal order.

Let us consider the case of the European Convention on Human Rights and Fundamental Freedoms (ECHR), for example. Ukraine signed the ECHR in 1995 and ratified it in 1997. On 28 June 1996, shortly after the Convention was signed, the Ukrainian Constitution was adopted by the Verkhovna Rada, the Parliament of Ukraine. It is obvious from the text of the Constitution that the drafters took into account the standards and principles enshrined in the ECHR, as well as other international acts, having implemented them in Chapter 2 devoted to human and citizens' rights and freedoms: many articles of this Chapter reproduce the conventional

rights and freedoms almost word by word[7]. In addition, Art. 9 of the Constitution recognised the international agreements ratified by the Parliament of Ukraine as an integral part of domestic legislation. This provided the possibility of direct application of the conventional provisions. Later, on 23 February 2006, the Law "On the Execution of Judgments and Implementation of the Case-Law of the European Court of Human Rights" was adopted. Among other provisions, this Law states that it aims 'to introduce European human rights standards into Ukrainian judicial procedure and administration' and introduces the new source of law into the Ukrainian legal system, i.e. the case-law of the European Court of Human Rights (ECtHR) that has to be applied by Ukrainian judiciary in relevant domestic cases[8].

There is no doubt that these developments are of fundamental significance for the Ukrainian legal order and can be the evidence of its 'transition' towards the European standards and principles. However, is it enough to introduce particular legislative provisions? Obviously, it is not. In order to fully implement conventional provisions, they should be applied by domestic courts and become a part of everyday legal practice. Although the national legal practitioners were provided with training and methodological support on the application of the ECHR and the ECtHR case-law by various local and international organisations and the number of cases where these sources of law are [correctly] applied is now constantly growing, many practical problems still exist. For the judges in Ukraine, a post-Soviet state in transition with a long-lasting tradition of legal positivism and formalism, it is often difficult to apply the sources of law other than legislative acts[9].

The same is also true in case of direct application of constitutional provisions, especially those containing legal principles or values (e.g. the Rule of Law principle, respect to human rights,

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7 **Meleshevich A., Khvorostyankina A**.,Ukraine. *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*, Leonard Hammer and Frank Emmert (eds.). - Eleven International Publishing, 2012, p. 557-596, p. 560.

8 Art. 3 of the Law, available at: http://zakon2.rada.gov.ua/laws/show/3477-15 (in Ukrainian).

9 **Meleshevich A., Khvorostyankina A.,** ..., p. 557-596, p. 592.

democracy etc.). The application of such norms requires specific methods of legal interpretation that would take into account not only the letter, but also the spirit of the Constitution.

Such problems are not easy to overcome as this requires fundamental changes in methodological approach, legal argumentation practice and legal culture generally. There will be more challenges along this route for the Ukrainian judiciary with the intensification of influence of the EU constitutional law (in particular, its values and fundamental principles, including the Rule of Law[10]) on the Ukrainian legal system. When the EU-Ukraine Association Agreement (AA)[11] enters into force[12], domestic judges will have to apply not only the precise provisions, but also the general principles enshrined in this act, as well as the case-law of the Court of Justice of the EU[13]. Among such principles, Art. 3 of the AA lists, in particular, "[…] the rule of law, good governance, fight against corruption […]" that are "central to enhancing the relationship between the Parties"; Art. 2, in its turn, states that "[r]espect for democratic principles, human rights and fundamental freedoms, […] and respect for the principle of the rule of law shall form the basis of the domestic and

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10 Kyiv's performance in sphere of rule of law to be crucial for subsequent implementation of association agreement, Interfax-Ukraine, 19.12.2011, available at: http://en.interfax.com.ua/news/general/89367.html (last visited 2.11.2014).

11 The Association Agreement was ratified by Ukraine on 16 September, 2014 (see the Law on ratification: http://zakon2.rada.gov.ua/laws/show/1678-18, in Ukrainian).

12 Some provisions of the Association Agreement can be now provisionally applied on the basis of Art. 486 of the Association Agreement.

13 **Petrov R.,** Legislative Approximation and Application of EU Law in Ukraine. In: Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space? Ed. by Roman Petrov, Peter Van Elsuwege. – Routledge, 2014, p. 158.

The same is relevant in case of some other post-Soviet states expressing aspirations for European integration, for example, in case of Moldova (*Khvorostiankina A*., Legislative Approximation and Application of EU Law in Moldova. In: Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space? Ed. by Roman Petrov, Peter Van Elsuwege. – Routledge, 2014, p. 177). Similar problems were faced in post-socialist states that became the new Members of the EU (Kühn, Z. The Application of European Law in the New Member States: Several (Early) Predictions, *German Law Journal,* 6(3), 2005, 547-564.

external policies of the Parties and constitute essential elements" of the Agreement. As D. Kochenov concludes, Art. 2 of the AA "*de facto* elevates all the values of Art. 2 TEU to the level of binding principles underlying the entirety of EU-Ukraine relations under Agreement"[14].

It should be noted, however, that, in line with the orientation of Ukraine towards European integration, some of the acts of the EU law, although not binding for Ukraine, have been already applied (or referred to) as persuasive sources of law by the Ukrainian judges[15]. These are predominantly (but not exclusively) the so called "value-based EU *acquis*" that often coincide with the principles and values enshrined in the Constitution of Ukraine.

Certainly, not only the methodological issues, but also such systematic problems as corruption and lack of judicial independence are the obstacles for effective legal reforms that have to be overcome.

Thus, one may conclude that every significant change in the legal order of the society in transition requires changes in its legal mentality and legal culture. The development of legal regulation in the course of legislative reforms aiming to introduce international and European standards does not *per se* guarantee the effective transformation of the legal system and transition from authoritarianism to democracy and the Rule of Law.

Let us now focus on the narrow definition of the 'constitutional reform' and analyse to what extent the formal constitutional reforms in Ukraine contributed to the strengthening of the Rule of Law.

Contemporary constitutional process and the implementation of the Rule of Law

The issue of implementation of the Rule of Law in the course of constitutional reforms can be analysed from two perspectives: (1)

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[14] **Kochenov D.,** The Issue of Values. *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space?* Ed. by Roman Petrov, Peter Van Elsuwege. – Routledge, 2014, p. 61.

[15] **Petrov R.,** …., p. 148-153.

the *substance* of constitutional reforms (i.e. Do the introduced amendments contribute to the strengthening of the Rule of Law?) and (2) the *procedural* aspects of such reforms (i.e. is the constitutional process itself run with respect to the Rule of Law principles?)[16].

As regards the substance of the constitutional reforms, among the most problematic issues are: effective regulation and guaranteeing of the constitutional rights and freedoms, implementation of the separation of power principle and development of the effective mechanism of checks and balances, reforming of judiciary, decentralisation of power, and creation of the effective local self-government. All of these issues are the important constituting components of the Rule of Law. Although addressed in a number of Laws amending the Constitution of Ukraine and other legislative acts, these questions are still on the constitutional reforms agenda.

Without the aim of covering all the changes in the constitutional regulation[17], in this article I will focus on some of the developments related to the implementation of the Rule of Law in Ukraine.

The Constitution of Ukraine was adopted in 1996. Although the text of the Constitution, being the product of political consensus, contained some "inadequacies", it was positively evaluated by local and international experts, including the European Commission for Democracy through Law (Venice Commission). In particular, in its Opinion CDL-INF (1997)002 on the Constitution of Ukraine, the Commission acknowledged the established mechanism of checks and balances and stated that "[t]he principles of the Rule of Law are well reflected in the text of the Constitution. The setting up of democratic local government as well as the important role assigned to the

[16] In this article, I mainly focus on those reforms that have resulted in the amending of the text of Constitution, although the number of reform initiatives (including the draft texts of new Constitution) has been much bigger. Some of the draft texts were assessed by the Venice Commission (see, for example, the Opinion CDL-AD (2009) 024 on draft Constitution presented by V. Yushchenko (then President of Ukraine) or Opinion CDL-AD (2008) 015 on the so called "Shapoval draft Constitution").

[17] Such important and problematic issues as judicial reform or the reform of local self-government deserve detailed analysis that cannot be provided within the limits of one article.

Constitutional Court should contribute to the establishment of a democratic culture in Ukraine"[18].

As it has already been said, Chapter 2 of the Constitution devoted to the rights and freedoms was drafted in compliance with international and European Human Rights standards and in some cases provided even more significant guarantees than required by the international acts. In contrast to the Soviet tradition, in the Constitution of 1996 an individual was recognized as the highest social value and the catalogue of rights contained both civil and political and social and economic rights. The shift to the democratic tradition was reflected even in the structure of the Constitution: the chapter on individuals' and citizens' rights immediately followed the first Chapter of the Constitution containing the general principles. Unfortunately, many of the constitutional rights and freedoms are not fully implemented in practice and the norms of the Constitution containing such rights remain rather declaratory.

Another problematic issue of the Rule of Law implementation is the realisation of the effective separation of power. As to the institutional model of state power organisation, in 1996, the Constitution established the presidential-parliamentary republic with a strong position of the President. Although the mechanism of checks and balances was established, in practice it did not work. The authoritarian abusing of authority by the Head of the State, based on the 'Soviet' mentality of political elite, resulted in concentration of power in the hands of the President and deep institutional conflicts. The judiciary was not an effective tool for resolving such problems.

Since that time, the processes of constitutional reform aiming at finding the optimal model of organisation of state power and improvement of checks and balance mechanisms are ongoing. In 2004, during the Orange Revolution, the reform attempts resulted in amending the Constitution and introducing a parliamentary-presidential institutional model. Although the position of the Parliament was strengthened, it did not contribute to the

[18] Opinion CDL-INF (1997) 002 on the Constitution of Ukraine, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(1997)002-e (last visited 20.01.2015).

strengthening of democracy in the state: the effective balancing mechanism was not created; this resulted in a deepening of the institutional crisis and created the possibilities of usurpation of power by the ruling party. The incoherency of the reform was underlined by the Venice Commission; in its Opinion on the constitutional amendments the Commission stated that "…a number of provisions […] might lead to unnecessary political conflicts and thus undermine the necessary strengthening of the rule of law in the country. In general, the constitutional amendments, as adopted, do not yet fully allow the aim of the constitutional reform of establishing a balanced and functional system of government to be attained".[19]

Moreover, the Law amending the Constitution (Law N 2222) was adopted with procedural violations (without obligatory referral to the Constitutional Court for its opinion on the draft required by Chapter XIII of the Constitution). This became the legal grounds for questioning the constitutionality of the Law: in 2007, the application requesting that Law N 2222 be declared as a contradiction of the Constitution of Ukraine was submitted by 102 parliamentary members. The Court, however, rejected the application on the formal grounds (in para. 3 of the Decision, the Court stated that when Law 2222 entered into force, its content became the integral part of the Constitution, thus the application questions constitutionality not of the legislative text, but of the text of Constitution itself)[20]. The attempts to change the reformed Constitution through legislative means were not successful either due to the lack of political consensus.

In July 2010, 252 parliamentary members submitted another application regarding constitutionality of Law N 2222 to the Constitutional Court. This time, in its decision of 30 September 2010, in contradiction to its position on the previous Decision of 2008, the Court found that Law N 2222 was adopted with procedural violations

[19] Opinion on the amendments to the Constitution of Ukraine adopted on 8 December 2004, CDL-AD (2005) 015, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)015-e (last visited 1.01.2015)

[20] Decision of the Constitutional Court in case N 6-y2008 of 5 February 2008, available at: http://zakon2.rada.gov.ua/laws/show/va06u710-08 (in Ukrainian) (last visited 20.01.2015).

and declared it unconstitutional[21]. This inconsistency of the Constitutional Court case-law (Decision of 2008 and Judgment of 2010) was underlined by the Venice Commission; in addition, the Commission considered "…highly unusual that far-reaching constitutional amendments, including the change of the political system of the country […] are declared unconstitutional […] after a period of six years"[22]; although there is no time limit for such applications, the declaration of unconstitutionality in this case undermined the principle of legal certainty – an important component of the Rule of Law[23]. It was further stated in the Commission's Opinion that "[a]s Constitutional Courts are bound by the Constitution and do not stand above it, such decisions raise important questions of democratic legitimacy and the rule of law"[24].

Although it was not directly stated in the Judgment, the Constitutional Court implicitly restored the Constitution in its 1996 version. As a result, the competences of the President (that time, V. Yanukovych) were significantly widened in contrast to those he was elected with by the people; that again led to the authoritarian concentration of power in hands of one person.

The analysis of these constitutional reforms from the perspectives indicated above (substantive and procedural) demonstrate that they did not succeed in strengthening of the Rule of Law: the attempt at finding the optimal institutional model of the state power organisation and establishing the balance between the competences of the President, the Cabinet of Ministers and the Parliament did not achieve their aim. One of the reasons of this failure might be that such attempts lacked a professional approach, were based on individual political interests and not on the will to

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[21] Judgment of the Constitutional Court of Ukraine N 20-рп/2010 in case N 1-45/2010 of 30 September 2010, available at: http://zakon4.rada.gov.ua/laws/show/v020p710-10 (in Ukrainian) (last visited 20.01.2015).

[22] Opinion on the Constitutional Situation in Ukraine CDL-AD (2010) 044-e, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)044-e (last visited 20.01.2015).

[23] Ibid. para 38.

[24] Ibid. para. 36.

bring the positive change. Moreover, the procedures of introducing these changes were not without violations.

The usurpation of power by the President in conjunction with the refusal from the pro-European course in foreign policy in November 2013, as well as severe violations of constitutional rights provoked mass protests, the "Revolution of Dignity". As one of the results of these events, on 22 February 2014, the Parliament of Ukraine renewed the provisions of the Constitution in its 2004 version with further amendments[25], establishing the parliamentary-presidential model of the institutional mechanism.

Starting from 2014, the legislature of Ukraine adopted several laws aiming to guarantee the transition to democracy and to overcome the negative consequences of the previous authoritarian regimes; some of such laws, however, were adopted under the pressure of the protesters and without strict adherence to the rules of legislative procedure. In particular, these problems were pointed out by the Venice Commission in its Interim Opinion on the Law "On Government Cleansing" ("Lustration Law") of 16 September 2014[26]. The Commission underlined that "such procedural irregularities are at odds with the rule of law. They cast a negative light on its legitimacy, which is particularly problematic for a law aiming at restoring trust in the public authorities and ensuring an open and transparent exercise of public power"[27]. In addition, the Commission found that some of the provisions of the Law (in particular, those regulating the

[25] Resolution of the Verkhovna Rada of 22 February 2014 "On the Text of the Version of the Constitution of Ukraine of June 28, 1996 as Amended by the Laws of December 8, 2004 №2222-IV, of February 1, 2011 №2952-IV, of September 19, 2013 №586-V", available at: http://zakon4.rada.gov.ua/laws/show/750-18 (in Ukrainian) (last visited 20.01.2015).
The Resolution lost its legal force on 2 March 2014 with entering into force of the Law "On Renewal of the Legal Force of Certain Provisions of the Constitution of Ukraine" of 21 February 2014, available at: http://zakon4.rada.gov.ua/laws/show/742-18 (in Ukrainian) (last visited 20.01.2015)..

[26] The Law covers the acts committed during the communist rule and the period of power usurpation by the President Yanukovych.

[27] Para. 14 of the Interim Opinion CDL-AD(2014)044-e of 12-13 December 2014, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)044-e (last visited 15.01.2015)

procedure of lustration) are not in compliance with the internationally recognised principles and standards (including the Rule of Law), regardless of their enumeration in Art. 1 of the Law. Similar comments were provided by the Council of Europe in relation to the Law "On the Restoration of Trust in the Judiciary of Ukraine" adopted on 8 April 2014 by the Parliament of Ukraine.[28]

It is worth underlining that, in order to guarantee the effective transition to democracy, not only should such measures as lustration be taken, but also the systematic changes on the level of constitutional regulation should be introduced. Thus, the comprehensive constitutional reform (comprising not only the reform of the institutional mechanism, but also the reforms of judiciary, Public Prosecutor's Office and local self-government) is still on the agenda[29]. In contrast to the previous periods, however, today the civil society (including professional and academic communities) much more actively participate in the reform processes[30]. The renewal of the pro-European course and deepening of the cooperation with the EU also stimulates the implementation of the internationally recognised standards and principles.

Problem of Crimea and armed conflict in Eastern Ukraine do not create the favourable atmosphere for the constructive work on the improvement of the constitutional regulation. However, as Jerzy

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[28] Expert Opinion on consolidated draft law, available at: http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/Appendix_draft_law_of_Ukraine_FINAL010414.pdf (last visited 20.01.2015).

[29] By this moment, several draft laws have been elaborated by various actors. On 2 July 2014, the President of Ukraine submitted the Draft Law Amending the Constitution of Ukraine to the Venice Commission. The Opinion CDL-AD(2014)037 on the Draft Law is available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)037-e. The Commission welcomed certain developments such as the proposed abolition of the imperative mandate and the general supervisory power of the Public Prosecutor's Office (para. 69 of the Opinion), and the shift towards the decentralization of power (para.70); at the same time, the experts underlined the strengthening of the presidential power (para. 71), the omission of the amendments of the provisions regarding judiciary (para. 72) and the fact the draft had not been publically discussed (para. 73).

[30] See, for example, the "Reanimation Package of Reforms" initiative: http://platforma-reform.org/?page_id=351

Pomianowski, Executive Director of the European Endowment for Democracy, stated, that this situation "*not prevent good planning of reforms or provide an excuse to diminish transparency and the role of civil society to monitor transformation*"[31]. To the contrary, the constitutional reforms should be intensified in order to guarantee the sustainable development of the Ukrainian society.

Conclusion

To sum up, it should be underlined that the success of the formal constitutional reforms (the reforms of the constitutional legislation) largely defends on the transformations in legal mentality and legal culture of the society, on the level of its readiness for changes, on the grounds and goals of such changes, and on the level of respect and trust the constitution enjoys in a state.

In 1996, the Constitution introduced the new legal, political, economic and social institutions that could be considered as the evidence of post-Soviet transformation of Ukraine. In practice, however, the constitutional provisions were not fully implemented because the Soviet thinking of the ruling elites was partially preserved and the problems inherited from the Soviet period still existed (corruption, lack of independence of judiciary, declaratory character of Human Rights etc.). Further constitutional reforms did not bring significant change. Being incoherent and motivated by political and business interests and ambitions, constitutional changes failed to create favourable conditions for transitional development of the state as would have been normally expected from any legal reforms. But the failures and shortcomings of these reforms became the "negative stimulus" for the transformation of the civil society in Ukraine. This developing civil society is now playing a significant role in the constitutional reforms.

[31] The overview of the Expert Discussion "A new Ukraine in the eyes of Ukrainian experts" (5 March, 2014, Brussels), available at the web-site of the Center for Legal and Political Reforms http://www.en.pravo.org.ua/index.php/151-european-integration/560-a-new-ukraine-in-the-eyes-of-ukrainian-experts (last visited 20.01.2015).

The search for the institutional model of the organisation of the state power that would be optimal for Ukraine and correspond to the requirements of the Rule of Law and the Ukrainian political and social reality is still ongoing. When such a balanced model is found and the relevant changes are introduced to the Constitution, it is important to remember that it is not the text of the Basic Law, but the practice of its implementation that is the evidence of positive changes in the society.