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Constitutionalism of European states: ensuring globalism in modern conditions

Конституціоналізм європейських держав: забезпечення в сучасних умовах глобалізму

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Abstract

Constitutionalism is a multidimensional phenomenon of state and socio-political life, which acquired different meanings and was filled with variable content in different periods of statehood development in connection with the formulation of constitutional ideas and principles and the formation of constitutional traditions, adoption of constitutions and their amendments. Today, ensuring the constitutionalism of European states has become an extremely essential issue. The work aims to analyze and study the provision of constitutionalism of European states in the modern conditions of globalism. Methodology: the historical method, the method of the generalization, the formal-legal method, method of analysis, comparative-legal method, method of social-legal experiment. Through the analysis of regulations of some European states and the views of some scholars, we can conclude that the modern idea of constitutionalization of the legal order is based on the postulates of constitutional theory and practical experience of democratic states.

Анотація

Конституціоналізм – є багатовимірним явищем державного та суспільно-політичного життя, що набувало різних сенсів і наповнювалося варіативним змістом у різні періоди розвитку державності у зв'язку з формулюванням конституційних ідей і засад та становленням конституційних традицій, прийняттям конституцій та внесенням змін до них. Сьогодні надзвичайно важливим питанням стало забезпечення конституціоналізму європейських держав. Метою роботи є аналіз та дослідження забезпечення конституціоналізму європейських держав в сучасних умовах глобалізму. Методологія роботи: історичний, узагальнення, формально-юридичний метод, метод аналізу нормативних документів, статей та монографій, порівняльно-правовий метод, метод соціально-правового експерименту. Таким чином, за підсумками роботи, можна узагальнити, що сучасна ідея конституціоналізації правового порядку ґрунтується на постулатах конституційної теорії і практичному досвіді розвитку демократичних держав.

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Keywords: constitutional law, constitutionalism, globalism, European state, national legal system, society.

Ключові слова: конституційне право, конституціоналізм, глобалізм, європейська держава, національна правова система, суспільство.

Introduction

Globalization processes lead to a change in the structure of the modern world, which results in the adjustment of national governance systems, changes in the planning of economic, political, and cultural development, and contributes to the continuous interdependence of the world. Such interdependence unifies and standardizes the conditions and factors of development of individual countries, serves as an indicator of determining the level of stability of development of states and their potential to meet the challenges of globalization, which today become the main criterion for integration into global or regional structures.

States that have an active system of constitutional governance and implement their geopolitical development strategy, preserve sovereignty, and have effective mechanisms of influence are able to meet globalization challenges. Given current trends, it is necessary to find out what modern globalization is, what forms it takes, whether this process is a necessary component of effective development, or whether it has a negative impact on the constitutionalism of each European state. But despite the questions raised, it is clear that globalization is a new type of world development, and, therefore, it is vital that every country in the world, regardless of the level of development, has the opportunity to find a place in the global space. These prerequisites indicate the need for further improvement of constitutional and legal regulation of significant social relations as a fundamental area of legal modernization of public relations in a modern democracy, built on the principles of constitutionalism.

In the context of modern research conducted by both domestic and foreign scholars and practitioners presented a large number of works devoted directly to the analysis of the nature and impact of globalization on the modern world.

The subject of the study is the social relations that arise, change, or cease in connection with the constitutionalism of European states in the context of globalism.

Theoretical Framework or Literature Review

Such scholars as Voloshin (2015), Demchyshak (2015), Yengibaryan (2010), Campo (2007), Klemin (2004), Kodaneva (2005), Alebastrova (2006), Todyka (2000), Kovachev (2005), Krusyan (2010), Melnychenko (2011), Maklakov (2006), Maslovskaya (2012), Pabriks (2021), Shamrai (2018), Mosler (1999), and Tomuschat (1999) studied the phenomena of constitutionalism.

Thus, Krusyan (2010) drew attention to the peculiarities of constitutionalism in international law and modern Ukrainian constitutionalism. Moreover, Voloshin (2015) analyzed the phenomenon of constitutionalization of the international (supranational) legal order and analyzed in detail the basic concepts and practices of their implementation.

It should be remarked that Demchyshak (2015) studied in detail the features of the European integration process in Poland through domestic and foreign policy dimensions. At the same time, Melnychenko (2011) examined the constitutional reform of Poland. The scholar concluded that constitutional reform in Poland was made possible by the democratic changes in the country in 1989-1990.

Furthermore, Yengibaryan (2010) and Maslovskaya's (2012) research on constitutional development in the modern world seems impressive. In particular, scholars have paid attention to the study of some areas of constitutional change in foreign countries at the present stage.

Campo (2007) explored the European integration aspect of the constitutionalization of Ukraine's foreign relations. A noteworthy study was conducted by Pabriks (2021). Thus, the author drew attention to the influence of foreign policy on the state of constitutionalism of each state.

Klemin (2004) carried out a comprehensive analysis of European law in Germany. The author drew attention to the balance of national and supranational law and analyzed how German conservatism, conflicts and unity of legal norms affect the provision of constitutionalism.

What is fascinating is the research of Kodaneva (2005), who studied the British constitutional reform through the prism of the religious aspect. The author noted that religion plays a significant role in the formation of legal traditions and the establishment of constitutionalism.

Such scholars as Tatsiy and Todyka (2003), Orzikh and Krusyan (2009), Romashov (1998), and Tanchev (2005) were engaged in comparative legal research of the Constitution of the 21st century. Likewise, these scholars have analyzed in detail the constitutional and legal principles of statehood in some countries.

Thus, Stetsiuk (2015) paid attention to the trends of constitutional development in the contemporary world. The author paid exceptional attention to the historical experience of the constitutional development of Ukraine, as well as the peculiarities of this process at the present stage, and concluded that "constitutional development" is "natural" for European peoples (i.e., based on the essence of European mentality). Christian moral values, the centuries-old struggle of man for his dignity). "Constitutional development" is also seen as a reliable way to preserve the national identity of European peoples, ensure their well-being and guarantee the democratic future of Europe.

Habermas drew attention to the crisis of the European Union in the light of the constitutionalization of international law (Habermas, 2013). Shamrai's (2018) work is devoted to theoretical and methodological approaches to defining the concept of "global constitutionalism" in modern conditions of legal globalization and European interstate integration in terms of finding effective means of comprehensive legal modernization of society. The author analyzes the legal content of this category, shows its specific features, reveals the importance of improving the basic elements of social relations and constitutional modernization of society and the state in modern conditions of legal globalization and European interstate integration. Emphasis is placed on the need to further improve the constitutional and legal regulation of major social relations as a key area of legal modernization of public relations in a modern democracy, built on the principles of European constitutionalism.

Yubko (2010) analyzed the advantages and disadvantages of the French constitutional reform. Thus, the author drew attention to the main directions of reform and concluded that

French constitutionalism as an effective way of governing the state.

In addition, various articles on European constitutionalism and recommendations for further action of states were studied (Voloshin, 2015; Alebastrova, 2006; Chirkin, 2019; Kovachev, 2005; Maklakov, 2006; Maslovskaya, 2012).

Methodology

The methods used to analyze the research topic are: the method of generalization, the method of historicism, the method of analysis, the method of comparison, the formal-legal method, and the method of socio-legal experiment.

Thus, with the help of the method of historicism, we can study the development of constitutionalism in European states. Hence, the trend of rapid development of globalization processes among European countries was established. Ukraine is no exception.

The method of analysis became the basic method in writing this article, as it helped to explore a large array of theoretical developments of scholars on the concept of constitutionalism, both in domestic doctrine and abroad.

Moreover, generalization method has summarized the primary issues of ensuring constitutionalism among European states in the context of globalization, including the erasure of borders and the functioning of various supranational organizations.

The formal-legal method showed us the development of the concept under study through the letter of the law. The studied legal aspects, prescribed by law, provided an opportunity to comprehensively study the phenomenon of constitutionalism in different European countries.

Additionally, the comparative-legal method made it possible to compare domestic practice in ensuring constitutionalism with the practice of European states, including Poland, Germany, and France. European countries are increasingly in a situation of interdependence, which affects the provision of their constitutionalism in the new realities.

Eventually, the method of socio-legal experiment contributed to the assessment of changes in ensuring the constitutionalism of European states. Further, we will predict further

development of this notion to ensure constitutionalism in a globalized world.

Results and Discussion

General provisions on ensuring constitutionalism

Before studying the features of the constitutionalism of European states in the context of globalism, it is necessary to provide a definition of constitutionalism.

In general, the term "constitutionalism" is used in several senses: as a form of government that is really limited by the constitution; political system based on the constitution and constitutional methods of government; a theory based on the need to establish a constitutional order. The basis of this phenomenon is not only the ideals of the rule of law, which must be implemented in the process of reforming the state system but also the original traditions and desires of the people as a source of power (Voloshin, 2015).

From the historical study, it is seen that the first element in the mechanism of functioning of the process of constitutional development was the constitution. The epoch of the constitution dates back to the epoch of bourgeois revolutions and attempts to ensure human rights and the separation of powers in the state. One of the most noteworthy reasons for creating constitutions was the need to fix at the highest level the change of power relations in the transition of society and the state from feudalism to democracy and the creation of a legal basis for further democratic development. At the same time, the consolidation of human rights and freedoms and the separation of powers have become necessary elements in the process of formation of constitutionalism (Tatsiy, & Todyka, 2003).

The constitutional state was constantly evolving, changing, and improving social relations along with the phenomenon of "constitution" and played a role in the content of "constitutionalism" as such in general.

Over time, the concept of a constitutional state consisted of three basic elements (Table 1):

Table 1.

Three basic elements of a constitutional state. Data provided by Tatsiy, & Todyka (2003).

1.	The state is the guarantor of the confidence and security of each of its members in particular and all in general;
2.	The constitutional state is a state governed by the rule of law;
3.	In a constitutional state, the existence of a democratic order of exercise of state power becomes mandatory.

In the process of development of the "constitutional state", the list of its main (qualification) characteristics was constantly expanding and at the end of the last century reached the so-called "classical set", according to which most states were able to identify themselves as sovereign, democratic, social and legal. At the same time, in the constitutional and legal practice of some countries, "additional" or "complementary" characteristics of the latter began to appear, following the example of their designation as "secular", "multiethnic", "multicultural", "environmental", etc. (Krusyan, 2010).

At the same time, the constitutional provisions that characterized the state at the national level had several features specific to a particular state.

It should be mentioned that constitutionalism as a political and legal category becomes a reality only after the emergence of the constitution of

the state and the establishment of the constitutional state as such. Its substantive basis is expressed through the unity of constitutional and legal norms and the practice of their implementation. That is, constitutionalism is seen as a political and legal ideology, intellectual generalizations inherent in a certain stage of historical development. At the same time, constitutionalism is often perceived as a socio-political movement aimed at implementing relevant ideas (Orzikh, & Krusyan, 2009).

Thus, it can be argued that it would be wrong to attribute constitutionalism to the achievements of one nation or people. After all, this concept is a global phenomenon, born at the time of European political and legal culture and an essential universal value, civilizational heritage and, accordingly, is to some extent universal. Nevertheless, in any democratic state, constitutionalism can acquire certain features (Table 2).

Table 2.

Factors that may affect the characteristics of a national model of constitutionalism. Data provided by Shamrai (2018).

No	Factors that may affect the characteristics of a national model of constitutionalism
1	Historical traditions of the people in the field of state formation;
2	Belonging of the country to one or another system of law;
3	Level of legal culture;
4	The state of development of democracy;
5	Features of the national mentality, etc.

In highlighting the essence of constitutionalism as such in general and, in particular, as a national phenomenon (a phenomenon inherent in a state at a certain historical stage of its development), it seems logical to consider this situation from the standpoint of inseparable unity and interaction of several categories. Namely, constitutional theory, constitutional legislation, and practice of its implementation (Shamrai, 2018).

Therefore, we can conclude that the main ideological postulates are reflected in the constitution of the state, which indicates the achieved level of development of society. The Constitution is not only a normative legal act that has certain legal properties but also an ideological document that performs an ideological function, within which one can distinguish ideological and educational subfunctions. Simultaneously, the constitution as an ideological document is based on the presumption that the goals of society are the tasks of the state.

Features of ensuring the constitutionalism of European states in the context of globalism

Conditions of globalism, increasing international influence, intensification of hybrid wars, and other phenomena, make us pay attention to the place of constitutionalism in the modern world, its main trends, and prospects. Given this, it is important to analyze the features of ensuring the constitutionalism of European states.

As already noted, the concept of constitutionalism can not be considered primary or even independent, because it is derived from the concept of "constitution", both etymologically and scientifically, and theoretically.

Analysis of the content of constitutional changes in recent years in the context of globalism allows us to identify some areas of these changes.

The constitutionalism of European states is based on the development of certain principles. The Constitutional Law of the French Republic of July 23, 2008, enshrined in Art. 1 of the Constitution (Law No. 1958, 1958), the principle of equality not only of the rights of women and men but also of their responsibilities (Maslovskaya, 2012).

Along with the democratization of the political system, the improvement of constitutions is associated with the improvement of social policy of modern countries, and, therefore, the constitutions adopted in recent decades have reflected new challenges of socio-economic nature. Thus, some of them are about a socially oriented economy (for example, the Polish Constitution (Law No. 483, 1997), the Constitutions of Portugal (Law No. 1976, 1976) and Spain (Law No. 1978, 1978) say about the state planning of economic development (Shamrai, 2018).

Traditional objects of constitutional regulation are also changing, which demonstrates the direct impact of global constitutionalism on the traditional subject and method of constitutional law as the basic national branch of law. Also, there are new approaches to regulating the organization and activities of the state – the use of atypical forms of government, the trend of regionalization of states, enshrining in the constitutions of basic principles of public policy, which are increasingly reflected in the use of such constitutional characteristics as legal, secular, social, democratic, etc. (Yengibaryan, 2010).

An example of ensuring constitutionalism in the context of globalism is the constitutional reform in Poland, which was implemented taking into account world constitutional values and the trend of modernization of constitutional- legal regulation of public relations. Thus, on December 16, 1991, Poland and the EU signed the "European Agreement establishing an Association between the Republic of Poland and

the European Communities and States". The European Association Agreement provided for close cooperation between the EU and Poland. The turning point was the adoption of the new Constitution of Poland on April 2, 1997. The adopted Constitution was the result of long political discussions and negotiations. An important item "Europe" is contained in Art. 90 of the Constitution, which aimed to find a balance between preserving the principles of national sovereignty and the envisaged possibility of integration into the EU. In the art. 90 of the Constitution states that "the Republic of Poland may, based on international agreements, delegate to an international organization or international institution the competence of public authorities on certain specific issues" (Demchyshak, 2015).

France is considered to be a kind of "laboratory of constitutions". The reform of 2008 was carried out in order to strengthen the role of parliament, strengthen control over the executive branch, and the acquisition of new rights by citizens. This reform strengthened the role of parliament in the state mechanism, giving parliament new rights, including the right to adopt resolutions; allow or continue military intervention abroad; discuss drafts on the text corrected by the commission, not the Government; endowed with rights in the field of international and European politics (Maslovskaya, 2012).

In today's reality, any deviation from the "constitutional axis" is detrimental and can provoke both local (within one or more entities) and domestic and international conflicts. A new model of building a system of government is becoming increasingly apparent at the interstate level. Thus, the principle of subsidiarity enshrined in the acts of the Council of Europe means complementarity and interchangeability of authorities at the interstate, state, regional and local levels.

It is no coincidence that one of the sections of the XVII Congress of the International Academy of Comparative Law (July 2006, Utrecht, the Netherlands) was devoted to discussing the issue of constitutionalization of the international legal order. At the VII Congress of Constitutionalists, attention was drawn to a new stage in the development of constitutional law, which is expressed in the global constitutionalization of all spheres of society, strengthening state sovereignty, even in the context of interstate integration. These provisions were also presented in the recommendations of this international forum (Resolution No. 2007, 2007).

It is worth noting the rather interesting position of Judge Kamp of the Constitutional Court, who shares the constitutionalization of foreign relations, in which the role of the constitutional mechanism of state power is particularly important, especially given European integration processes in the country. The essence of this constitutionalization, according to Kamp, is to strengthen the foundations of the functioning of the state and public life as necessary conditions for their development (Campo, 2007).

The above indicates a noticeable trend towards the constitutionalization of international law. For example, drafting the Constitution of the European Union and the Constitutional Act of the Union State of Belarus and Russia.

In modern conditions, these ideas have been further developed in various concepts of constitutionalization of Mosler's international law (Mosler, 1999). Habermas formulated the conceptual position that international reality cannot be understood adequately if it is perceived as a "natural state" in the spirit of Hobbes (Habermas, 2013).

The dynamic impact of the constitution on the legal system can occur in two different types of socio-political and socio-economic conditions (Table 3).

Table 3.

The dynamic impact of the constitution on the legal system. Data provided by Habermas (2013).

The stable democratic constitutional regime and legal system	Legal system of transitional societies
Unification takes place as a normal, stable process and only intensifies with the amendment of the constitutional text, following which it is necessary to bring sectoral legislation and judicial practice in the interpretation and application of constitutional norms.	Transition to basic European values, such as democracy, rule of law, local self-government, etc.

Thus, ensuring constitutionalism is based on the postulates of the constitutional theory and experience of democratic European states and acquires a global supranational character.

Conclusions

The constitutionalization of international law can be described as a process of influence of the modern doctrine of constitutionalism, norms, and principles of constitutional law of different states on the normative system of international law. Under such conditions, international law is constantly under pressure from constitutional principles, thus gaining a more universal basis for its further development in the context of interstate integration.

The modern process of constitutionalization of the international legal order is a process of influence of the modern doctrine of constitutionalism, norms and principles of the constitutional law of different states on the normative system of international law. The processes of globalization inevitably affect the state of constitutionalism.

As for further scientific research, it is important to pay attention to constitutionalism in the context of the Covid-19 pandemic, which has confused the world and united around the idea of joint opposition to a dangerous virus.

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