

BELOV D. M.

Uzhhorod National University,
Professor of the Department of Constitutional Law and Comparative Law,
Doctor of Law, Professor

CONSTITUTION AND STATE POLICY: THE ISSUE OF CORRELATION

Key words: *supreme bodies, Basic Law, political sphere, historical conditions.*

Today, one of the reasons for the constant tension in relations between the supreme bodies of state power in Ukraine is the imperfection of the Basic Law, the different interpretation of its norms, as well as the fundamental change of the state policy, especially after the 2004–2005 presidential elections.

The constitution has a mixed political and legal nature, as well as to a large extent all constitutional law. Constitutional relations that arise on the basis of its provisions can also be characterized as having a dual nature: political and legal at the same time. Powerful relations subject to constitutional regulation create prerequisites for the appearance of political issues in constitutional law and politicize it to a certain extent. The political and legal in the constitution are closely intertwined, as well as the implementation of constitutional provisions can have a legal and political dimension.

As A. Heywood has rightly pointed out, for the vast majority of democratic states, constitutions were traditionally perceived as “precise descriptions of the current system of government” [1]. Consequently, any constitution always carries a certain prognostic-axiological element, which allows foreseeing a further direction of the state development and, accordingly, state policy. It is important to note that the prognostic function of the Constitution is directly written by well-known domestic researcher Yu. Todyka [2]. However, we now mean not only one of the possible functions of the constitution but also the fact that at its level the values are laid down that the state is called to provide.

The authors of the monograph “Politics, Law and Power in the Context of Transformation Processes in Ukraine” characterize state policy as a “system of purposeful measures aimed at solving certain social problems, meeting public interests, ensuring the stability of the constitutional, economic, legal system of the country [...] the specificity of which is that it is realized through the power structures that have the authority of the monopoly right of the state to lawful coercion” [3]. Indeed, the link between the state policy and the constitution is shown by not only the reference to such a concept as “constitutional system”. From the outset, the authors of the above-mentioned study establish a clear correlation between the direction of state policy and the process of ensuring social stability and satisfaction of the public interest. It should be borne in mind: the main social interests are always connected with the system of rights and freedoms of citizens of the state, which are not only formally fixed in the Constitution but must also be secured by it as a

legal act of the highest legal force, which has a sign of direct imperative action (Article 8 of the Constitution of Ukraine) [4].

The same can be said for a widely used in the modern Ukrainian science definition of the state policy by V. Tertychka. This author proposes to interpret the state policy in the following way: “relatively stable, organized, and purposeful activity/inactivity of state institutions, carried out by them directly or indirectly on a particular problem or a set of problems that affects the life of society” [3]. Moreover, justifying the appropriateness of this way of understanding the phenomenon of state policy, he notes that the definition of state policy implicitly implies that it is based on the law and must be legitimate. That is, state policy does not appear, so to speak, solely on its own accord and on their own will of those who are currently endowed with state power. On the contrary, in order that this direction of the state’s activity should be systematic and coherent, it is necessary from the very beginning to have a certain set of rules and principles that would indicate: a) the type of political regime; b) the way of organizing state power; c) the main political institutions, the presence of which ensures the normal development of the state mechanism; d) the basic values and tasks that must be implemented during state and social development.

These rules should be fixed at the legislative level so that there are no ambiguous political interpretations of the way, in which policy should be implemented and on what grounds [4]. The universal method of fixing these rules and regulations is the method of constitutional determination. By giving these rules and principles an imperative value, the state acts as the guarantor of the fact that all participants in social and political relations will adhere to them. At the same time, it itself, as a mechanism of institutionalized coercion, will act in accordance with certain standards. Therefore, it is quite natural that in all democratically-operated countries, programs for the realization of state policy are always developed and implemented in accordance with the constitution.

However, it is necessary to distinguish between the constitution as a legal act and the functions specific to it in the legal field and the constitution as a political document having a certain socio-political content that directly or indirectly affects the entire political system of the country [5].

Consequently, the relationship between the constitution and politics manifests itself in two main areas. First, in a broad sense, political relations are one of the most important constituent parts of constitutional regulation. Constitutional norms set legal boundaries for the political process. They consolidate the foundations of the political system of society, and not only. In modern constitutions, the foundations of the social and spiritual systems of society, which affects the expansion of the object of constitutional regulation at the turn of XX–XXI centuries, are increasingly reflected. As rightly V. Chyrkin notes, “constitutional law went beyond a largely formalized approach of the XVIII–XIX centuries and spread to the settlement of issues of the social system, the situation of one or another stratum, groups of the population (social, national, age, etc.), socio-economic rights” [6].

Secondly, the constitution itself embodies a certain policy of the state, the desire of the project developers to consolidate certain principles and political values. Even K. Marx argued that “all legal has in its essence a political nature” [7]. This thesis on the Basic Law, according to V. Luchyn, becomes of a special significance. The political orientation of the constitution is one of the most important qualities that determine its special role in the legal system, a special social role in society. However, the idea that a constitution is created by the state to achieve a certain political goal requires some adjustments [8].

From the standpoint of democratic constitutionalism and the theory of social contract, both the institutions of public authority and the electoral body participate in the act of constitution creation in one way or another. Therefore, official representatives of the state – only one of the subjects of the constitution creation. The constitution should integrate not only state goals of development but also the idea of society about the goals of social progress, to be an indicator of the needs of different social groups, the expression of their expectations and hopes [4].

In the history of Ukrainian constitutionalism, the Constitution has repeatedly acted as a tool of state policy, ruling circles or political forces that came to power. Thus, the First Soviet Constitution – the Constitution of the RSFSR of 1918 – consolidated the victory of the proletariat and the poorest peasantry after the October Revolution, and was actively used by the Bolsheviks as a means of political struggle against social strata and classes that did not share the ideals of socialist construction.

Interesting is the characteristic of the Constitution of the RSFSR of 1918, given by the well-known Soviet legal ideologist of the 20's P. Stuchka to the twelfth anniversary of the revolution of the state and law. He called it “the civil war constitution”, which is largely justified since it openly supported class positions on the issue of the acquisition and implementation of basic civil and political rights and freedoms [9]. Later in the process of constitutional development of the Soviet state, constitutional right gradually cleared itself from the ability to act as a tool of class domination, acquiring the nature of a universal legal regulator [4].

In the mid-80's, political scientist I. Stepanov, reflecting on the relationship between the constitution and politics, expressed the view that politics and law should be represented in the constitution in an organically integral form, “balanced in a coherent unity” [10]. Of course, during the Soviet period, the study of the constitutional policy was limited by many party-ideological barriers. However, the search for an optimal combination of politics and law in the constitution, constitutional policy, and political law is an important and constantly restored process of democratic development.

On the one hand, the tradition of observing constitutional limitations by subjects of political activity and political relations should be developed. On the other hand, the constitutional law should not be disconnected from political issues, and constitutionalists should seek to see political aspects in the implementation of constitutional norms. The study of political issues in constitutional law can shed light on the motives for adopting the constitution as a whole or individual constitutional changes, it can serve as an explanation

or justification for the constitutionally regulated actions of state bodies and officials. In general, political issues highlight the controversial and problem areas of constitutional and legal development, contribute to the formation of a constitutional paradigm within the legally established normative framework of relations of person, society, and state [11].

In the concept of a political constitution, a special vision of a political community is laid down, in which a coordinated interaction between citizens and authorities is ensured and a political agreement on rules of conduct in the political sphere is taking place. History gives a lot of examples of violent imposing of the constitution by the ruling party, the authoritarian head of state, the oligarchic or military regime. However, in the spirit of the democratic policy, a constitution as a political document cannot be a political pact, which reflects the search for public consent and compromise in resolving various political and social conflicts [4].

In the political sphere, functions of the constitution are inextricably linked with its nature. In many respects, its effectiveness in the field of politics depends on the nature of the constitution. After all, the nature of the constitution is its socio-political content. In the national political science, in the Soviet era, the class nature of the constitution and its content were distinguished. Under class nature, they understood the basic socio-political characteristics of the constitution. It finds its manifestation in its content, principles, properties, and functions, has a decisive influence on its form, defining its fundamental features. The content of the constitution is the specification of its class nature. Moreover, the content may vary within a specific nature under the influence of a number of objective and subjective factors. The constitution had a dual meaning – social and legal [12]. The point is that this approach was based on a formative theory, according to which the specifics of the nature of the constitution in different countries were tied to a certain socio-economic formation. Throughout the period of the development of Soviet constitutions, even in the late period, known as «developed socialism», dominated the class concept of the nature of the constitution, which was determined by the class (classes) it serves and which type of property it establishes [13].

In our opinion, the nature of the constitution derives from its socio-political content, so to speak, in a concentrated form. The legal content of the constitution is determined by the objects of constitutional regulation, in other words, what legal institutes, principles, and provisions are reflected in the text of the constitution and in this regard acquire the constitutional status. Given the differences in the legal and socio-political content of the constitution, it is necessary to identify the key elements of its nature, which have a political influence on the functioning of constitutional provisions.

These elements can be formulated in the form of theoretical postulates, the answers to which give a general idea of the nature of a specific constitution. These include:

- 1) the will of which political forces found a consolidation in constitutional provisions (whose political will was enshrined in the constitution?);

2) the interests of which social strata are reflected in the constitutional provisions and supported by them (whose interests are reflected and supported by the constitution?);

3) what is the degree of legitimacy of the constitution, which is largely determined by the terms of its project development and the procedure for its adoption (how the chosen procedure for the development and adoption of the constitution influenced the degree of its legitimacy?).

In specific historical conditions and the legal culture of an individual country, the answers to these questions may vary. In the constitutional history of one and the same country, different constitutions may have a different essence. Moreover, the essence of one and the same constitution can eventually be transformed and move away from the original idea of its creators. This is primarily related to the fact that the socio-political conditions of the constitution, the implementation of its provisions can change.

References:

1. Хейвуд Э. Политология, Юнити-Дана, Москва 2005, р. 359.
2. Тодыка Ю.Н. Конституция Украины, pp. 70–80.
3. Політика, право і влада в контексті трансформаційних процесів в Україні, ed. І.О. Кресіної, Інститут держави і права ім. В.М. Корецького НАН України, Київ 2006, р. 35.
4. Гладуняк І. Конституція, pp. 11–12.
5. Ibidem.
6. Чиркин Б.Е. Об объекте конституционно-правового регулирования. Российский конституционализм: проблемы и решения: материалы международной конференции, Академия, Москва 1999, р. 126.
7. Маркс К., Энгельс Ф. Сочинения, 2-е изд. vol. I, Политиздат, Москва 1991, р. 635.
8. Лучин В.О. Конституционные нормы и правоотношения: учебное пособие [для вузов], Эксмо, Москва 1997, pp. 33–34.
9. Стучка П.И. Двенадцать лет революции государства и права, “Революция права” 6 (1929), р. 10.
10. Степанов И.М. Конституция и политика, р. 24.
11. Кравец И.А. Сущность конституций и конституционный процесс (динамика социально-политического содержания российских конституций), “Вестник Московского” гос. ун-та. 4 (2003), р. 35.
12. Юдин Ю.Л. Конституции, in: Конституционное право развивающихся стран: предмет, наука, источники, ed. В.Е. Чиркин, Юридическая литература, Москва 1987, р. 39.
13. Фарберов Н.П. Новая Конституция СССР – манифест эпохи строительства коммунизма, in: Н.П. Фарберов, Конституция развитого социализма, Восток-А, Москва 1979, р. 68.