THE RIGHT TO PARTICIPATE IN THE MANAGEMENT OF STATE AFFAIRS: LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

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The article notes that in the conditions of armed aggression by Russia against Ukraine, the urgent issues are the development of constitutionalism in Ukraine and the effective management of state affairs under the legal regime of martial law. An element of constitutionalism is judicial constitutionalism. Its development occurs not only due to the direct application of the norms of the Constitution of Ukraine, but also due to the combination of legal positions of the Constitutional Court of Ukraine into a single whole. Attention is drawn to the fact that there is experience of foreign states when, while reforming their national legislation regarding the right to participate in the management of state affairs, and having the conclusions of the constitutional court of the state on the compliance of the draft law with the norms of the constitution, in fact there was not progress in the development of constitutionalism, but regression and a gross violation of the principle of the rule of law.

The scientific article establishes that the legal positions of the Constitutional Court of Ukraine regarding the right of every citizen to participate in the management of state affairs guaranteed by Part 1 of Article 38 of the Constitution of Ukraine are contained in the opinion of the Constitutional Court of Ukraine in the case on amendments to Article 98 of the Constitution of Ukraine dated March 25, 1999 No. 1-в/1999; the decision of the Constitutional Court of Ukraine in the case on amendments to certain legislative acts of Ukraine regarding the elections of the President of Ukraine dated October 19, 2009 No. 26-рп/2009; the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, City Mayors» dated May 29, 2013 No. 2-rp/2013; the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, City Mayors» dated May 29, 2013 No. 2-rp/2013; the decision of the Constitutional Court of Ukraine in the case on holding a local referendum in the Autonomous Republic of Crimea dated March 14, 2014 No. 2-rp/2014; the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Acting President of Ukraine, Chairman of the Verkhovna Rada of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On the Declaration of Independence of the Autonomous Republic of Crimea and the City of Sevastopol" dated March 20, 2014 No. 3-rp/2014; Opinion of the Constitutional Court of Ukraine (Grand Chamber) in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on the provision of an opinion on the compliance of the draft law on amendments to Article 81 of the Constitution of Ukraine (regarding additional grounds for early termination of the powers of a people's deputy of Ukraine) (Registration No. 1027) with the requirements of Articles 157 and 158 of the Constitution of Ukraine dated December 24, 2019 No. 9-в/2019.

As a result of the analysis of all decisions of the Constitutional Court of Ukraine in the article, the legal positions of the Court have been highlighted. It is noted that they should serve as a guideline in improving existing laws that develop the norms of the Constitution of Ukraine, which enshrine the right of a citizen to participate in the management of state affairs, developing new laws in view of Ukraine's European integration and the occupation by Russia of part of the territories of Ukraine, and developing the practice of the Constitutional Court of Ukraine.

Keywords: the right of a citizen to participate in the management of state affairs, constitutionalism, constitutional values, judicial constitutionalism, decisions of the Constitutional Court of Ukraine, interpretation, legal position of the Constitutional Court of Ukraine.

Formulation of the problem

In the context of Russia's armed aggression against Ukraine, the development of constitutionalism in Ukraine and the effective management of state affairs under the legal regime of martial law are topical issues. It is well known that judicial constitutionalism is an element of constitutionalism. As Professors Lyudmila Deshko, Olga Sovhyria and other scholars rightly point out in their studies, its development occurs not only through the direct application of the norms of the Constitution of Ukraine, but also through the integration of the legal positions of the Constitutional Court of Ukraine into a single whole [1-4].

Today, integrating into the European Union, Ukraine is improving existing legislation, which develops the norms of the Constitution of Ukraine, which guarantee a citizen the right to participate in the management of state affairs, and also develops and adopts new laws. The experience of foreign states shows that there are cases when, while reforming their national legislation and having the conclusions of the constitutional court of the state on the compliance of the draft law with the norms of the constitution, in reality the state does not make progress in the development of constitutionalism, but on the contrary - a gross violation of the principle of the rule of law. Such a case is studied in the scientific articles of Professor Lyudmila Deshko [5-7].

Therefore, the issue of the legal positions of the Constitutional Court of Ukraine on the right of a citizen to participate in the management of state affairs is relevant, theoretically and practically conditioned.

The purpose of this article

The purpose of this article is to identify the decisions of the Constitutional Court of Ukraine on the constitutional right of a citizen to participate in the management of state affairs and the legal positions of the Court in them.

Presenting main material

In the science of constitutional law, the issue of legal positions has been studied in the works of: N. Barber – on constitutionalism as a synonym for the legal support of constitutional restrictions [8], Lyudmila Deshko – on the constitutional values contained in the decisions of the Constitutional Court of Ukraine, and their comparability with European values, legal support of constitutional restrictions [9-11], Olga Sovhyra – on the prospects for the development of judicial constitutionalism, legal positions of constitutional courts of foreign countries and their use as a "guideline" by the Constitutional Court of Ukraine [4]. The issue of the legal positions of the Constitutional Court of Ukraine on the right of a citizen to participate in the management of state affairs has not been comprehensively studied.

Part 1 of Article 38 of the Constitution of Ukraine guarantees citizens of Ukraine the right to participate in the management of state affairs, in national and local referendums, to freely elect and be elected to state authorities and local self-government bodies [12]. In accordance with Part 2 of Article 38 of the Constitution of Ukraine, citizens enjoy equal access to civil service, as well as to service in local self-government bodies [12].

Opinion of the Constitutional Court of Ukraine in the case on the application of the Verkhovna Rada of Ukraine for an opinion on the compliance of the draft Law of Ukraine "On Amendments to Article 98 of the Constitution of Ukraine" with the requirements of Articles 157 and 158 of the Constitution of Ukraine (case on Amendments to Article 98 of the Constitution of Ukraine) dated March 25, 1999. No. 1-v/1999 [13] contains the following legal positions of the Constitutional Court of Ukraine:

1) the right to participate in the exercise of control in the financial and economic sphere is a structural element of the citizen's constitutional right to participate in the management of state affairs;

2) by exercising control in the financial and economic sphere, citizens exercise their right to participate in the management of state affairs;

3) the exercise by a citizen of Ukraine of his right to participate in the management of state affairs and such an opportunity, which is a structural element of this right, as participation in the management of state affairs, is carried out both directly and through representatives elected to state authorities;

4) state finances are also formed at the expense of citizens - taxpayers and levies;

5) the amount of taxes and levies and the procedure for their payment must be established exclusively by law;

6) there must be parliamentary control in the financial and economic sphere;

7) the right of a citizen of Ukraine to exercise parliamentary control is a structural element of the constitutional right of a citizen to participate in the management of state affairs;

8) parliamentary control is a certain guarantee of protection of the legitimate interests of citizens who have the right to participate in the management of state affairs, as taxpayers and levies;

9) entrusting the function of higher control, than that exercised by the Verkhovna Rada of Ukraine, to a non-representative body violates the unity and integrity of the higher by its nature parliamentary control;

10) entrusting the functions of "higher parliamentary control" to a non-representative body (including the Accounting Chamber) means narrowing the content and scope of the constitutional right of citizens to participate in the management of state affairs; 11) restrictions on the exercise of the constitutional right of a citizen to participate in the management of state affairs are not allowed.

The Decision of the Constitutional Court of Ukraine in the case on constitutional submissions of the President of Ukraine and 48 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the laws of Ukraine "On the Elections of the President of Ukraine", "On the State Register of Voters", "On Amendments to Certain Legislative Acts of Ukraine Concerning the Elections of the President of Ukraine" and the Code of Administrative Procedure of Ukraine (case on Amendments to Certain Legislative Acts of Ukraine Concerning the Elections of the President of Ukraine) dated October 19, 2009 No. 26-rp/2009 [14] contains the following legal positions:

1) the state guarantees freedom of political activity not prohibited by the Constitution and laws of Ukraine;

2) certain restrictions and conditions for the exercise of the right of citizens to freedom of political activity may be established at the constitutional and legislative levels;

3) the activities of citizens of Ukraine are carried out through their participation in the political life of society;

4) the right to participate in the political life of society includes the following structural elements: the right of citizens to participate in the management of state affairs, in all-Ukrainian and local referendums, to freely elect and be elected to state authorities and local self-government bodies;

5) election commissions are a subject of the electoral process, its integral part;

6) election commissions are empowered to resolve important issues for the state regarding the organization and conduct of elections;

7) participation in the work of election commissions is a way of exercising the right of citizens to participate in the management of state affairs;

8) constitutional rights and freedoms of man and citizen cannot be restricted, except in cases provided for by the Constitution of Ukraine;

9) the establishment of restrictions on the rights and freedoms of man and citizen is permissible only on condition that such a restriction is reasonable (proportional) and socially necessary;

10) depriving a citizen of Ukraine of the right to participate in the management of state affairs by participating in the work of a district or precinct election commission due to his residence outside the relevant district or city in the absence of a state of war or emergency is a violation of Part Four of Article 15 and Part One of Article 38 of the Constitution of Ukraine.

The Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On the Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, City Mayors» dated May 29, 2013 No. 2-rp/2013 [15] contains the following legal positions:

1) the continuity of the process of exercising state power and self-government must be ensured in the state;

2) the terms of office of the President of Ukraine, people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, settlement, city mayors may be unified in the state to ensure the continuity of the process of exercising state power and self-government;

3) the terms of office of the President of Ukraine, people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, settlement, city mayors may be unified in the state to reduce expenditures from the State Budget of Ukraine for holding elections;

4) the Fundamental Law of Ukraine defines the mechanisms for implementing the right of a citizen to participate in the management of state affairs;

5) unification of the terms of office of local self-government bodies is one of the ways that determines the mechanism for implementing the right of a citizen to participate in the management of state affairs;

6) unification of the terms of office of local self-government bodies may be carried out to predict the date of the next regular elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, settlement, city mayors.

In the Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, and City Mayors» dated May 29, 2013. No. 2-rp/2013 [16] contains the following legal positions:

1) in order to unify the terms of all regular elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, settlement, city mayors and to ensure the possibility of implementing the mechanism of their simultaneous holding, all regular elections of deputies of local councils and village, settlement, city mayors should be held on the last Sunday of October of the fifth year of the powers of the councils or mayors elected in the regular elections on October 31, 2010, that is, on the last Sunday of October 2015;

2) during the term of all regular elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, settlement, city mayors, elections of deputies of local councils, village, settlement, city mayors elected in the extraordinary elections should also be held;

3) extension or reduction of the terms of office of local self-government bodies elected in extraordinary elections is a temporary measure;

4) the legitimate goal of the state's introduction of such a temporary measure as reduction of the terms of office of local self-government bodies elected in extraordinary elections is to ensure the implementation of the mechanism for the simultaneous holding of all regular elections of deputies of local councils and village, settlement, and city mayors, which does not impede the exercise of the constitutional right of citizens to participate in the management of state affairs.

The Decision of the Constitutional Court of Ukraine in the case on constitutional submissions of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On holding a nationwide referendum" (case on holding a local referendum in the Autonomous Republic of Crimea) dated March 14, 2014 No. 2-rp/2014 [17] contains the following legal positions:

1) the right of citizens to participate in a referendum is their inalienable constitutional right;

2) issues of national importance are submitted to an all-Ukrainian referendum;

3) issues of national importance are such issues, the resolution of which affects the fate of the entire Ukrainian people – citizens of Ukraine of all nationalities;

4) only issues falling within the jurisdiction of local self-government bodies of the relevant

administrative-territorial unit may be submitted to a local referendum.

The Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Acting President of Ukraine, Chairman of the Verkhovna Rada of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On the Declaration of Independence of the Autonomous Republic of Crimea and the City of Sevastopol" dated March 20, 2014 No. 3-rp/2014 [18] contains the following legal positions:

1) the right to self-determination on the territory of the Autonomous Republic of Crimea and in the city of Sevastopol was realized by their residents as an integral part of the entire Ukrainian people during the nationwide vote at the all-Ukrainian referendum on December 1, 1991;

2) the results of this referendum were taken into account by the Ukrainian people;

3) the Ukrainian people are citizens of all nationalities;

4) on behalf of the Ukrainian people, the Verkhovna Rada of Ukraine adopted the Constitution of Ukraine on June 28, 1996, in which, in particular, it proclaimed Ukraine a sovereign and independent state (Article 1) and enshrined the principle of its territorial integrity (Article 2);

5) the Constitution of Ukraine does not provide for the right of a separate part of the citizens of Ukraine (including national minorities) to unilateral self-determination, as a result of which the territory of Ukraine as a unitary state will change;

6) the issue of changing the borders of Ukraine must be resolved at an all-Ukrainian referendum;

7) an all-Ukrainian referendum on changing the borders of Ukraine is appointed by the Verkhovna Rada of Ukraine in accordance with Article 73, Clause 2 of Part One of Article 85 of the Fundamental Law of Ukraine.

The Opinion of the Constitutional Court of Ukraine (Grand Chamber) in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on the provision of an opinion on the compliance of the draft law on amendments to Article 81 of the Constitution of Ukraine (regarding additional grounds for early termination of the powers of a people's deputy of Ukraine) (Registration No. 1027) with the requirements of Articles 157 and 158 of the Constitution of Ukraine dated December 24, 2019 No. 9-v/2019 [19] contains the following legal positions:

1) "electoral bloc of political parties" is a separate institution;

2) if the Constitution of Ukraine provides for the possibility of forming electoral blocs of political parties and the presence in parliament of a "deputy faction of an electoral bloc of political parties" following the elections to the Verkhovna Rada of Ukraine, then citizens of Ukraine can thereby exercise their right to "participate in the management of state affairs", "freely elect and be elected to state authorities not only by exercising active and passive electoral rights – by voting in parliamentary elections for a candidate for People's Deputies of Ukraine belonging to a political party, or by standing as a candidate for People's Deputies of Ukraine belonging to a political party;

3) if the Constitution of Ukraine provides for the possibility of forming electoral blocs of political parties and the presence in parliament of a "deputy faction of an electoral bloc of political parties" following the elections to the Verkhovna Rada of Ukraine, then citizens of Ukraine are not deprived of the right to vote for a candidate belonging to an "electoral bloc of political parties";

4) if the Constitution of Ukraine provides for the possibility of forming electoral blocs of political parties and the presence in the parliament of a "deputy faction of an electoral bloc of political parties" based on the results of elections to the Verkhovna Rada of Ukraine, then citizens of Ukraine have the right to be a candidate for people's deputies of Ukraine in the elections from an "electoral bloc of political parties";

5) the right of citizens to participate in the management of state affairs is exercised primarily through elections: elected representatives of the people exercise such a right directly, and all citizens - through their elected representatives; 6) the abolition of the right of a citizen of Ukraine to participate in the management

of state affairs contradicts the Constitution of Ukraine.

Conclusions

1. It has been established that the legal positions of the Constitutional Court of Ukraine regarding the right of every citizen to participate in the management of state affairs guaranteed by Part 1 of Article 38 of the Constitution of Ukraine are contained in:

1) the opinion of the Constitutional Court of Ukraine in the case on the application of the Verkhovna Rada of Ukraine for the provision of an opinion on the compliance of the draft Law of Ukraine "On Amendments to Article 98 of the Constitution of Ukraine" with the requirements of Articles 157 and 158 of the Constitution of Ukraine (case on Amendments to Article 98 of the Constitution of Ukraine) dated March 25, 1999 No. 1-v/1999;

2) the decision of the Constitutional Court of Ukraine in the case on constitutional submissions of the President of Ukraine and 48 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the laws of Ukraine «On the Elections of the President of Ukraine», «On the State Register of Voters», «On Amendments to Certain Legislative Acts of Ukraine Concerning the Elections of the President of Ukraine» and the Code of Administrative Procedure of Ukraine (case on Amendments to Certain Legislative Acts of Ukraine Concerning the Elections of the President of Ukraine) dated October 19, 2009 No. 26-rp/2009;

3) the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, City Mayors» dated May 29, 2013 No. 2-rp/2013;

4) the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people's deputies of Ukraine on the official interpretation of the provisions of part two of Article 136, part three of Article 141 of the Constitution of Ukraine, paragraph one of part two of Article 14 of the Law of Ukraine «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Settlement, City Mayors» dated May 29, 2013 No. 2-rp/2013;

5) the decision of the Constitutional Court of Ukraine in the case on the constitutional submissions of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On holding a Crimean-wide referendum" (the case on holding a local referendum in the Autonomous Republic of Crimea) dated March 14, 2014 No. 2-rp/2014;

6) the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On the Declaration of Independence of the Autonomous Republic of Crimea and the City of Sevastopol" dated March 20, 2014 No. 3-rp/2014;

7) the opinion of the Constitutional Court of Ukraine (Grand Chamber) in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on the provision of an opinion on the compliance of the draft law on amendments to Article 81 of the Constitution of Ukraine (regarding additional grounds for early termination of the powers of a people's deputy of Ukraine) (reg. No. 1027) with the requirements of Articles 157 and 158 of the Constitution of Ukraine dated December 24, 2019 No. 9-в/2019.

2. As a result of the analysis of the abovementioned decisions of the Constitutional Court of Ukraine conducted in the article, the legal positions of the Court were highlighted and the legal positions of the Constitutional Court of Ukraine on the constitutional right to participate in the management of state affairs were revealed.

These legal positions should serve as a guideline in: 1) the development of the practice of the Constitutional Court of Ukraine; 2) the improvement of existing laws that develop the norms of the Constitution of Ukraine, which enshrine the right of a citizen to participate in the management of state affairs; 3) development of new laws in view of Ukraine's European integration and Russia's occupation of part of Ukraine's territories; 4) application of forms of direct and indirect democracy in Ukraine.

References:

1. Deshko L. M., Bysaga Y.M., Zaborovskyy V.V. Protection of human rights by the Constitutional Court of Ukraine in the field of health care. Georgian Medical News. 2019. №7. P. 160-166.

2. Право – дієвий засіб перемоги України у війні з рф: аналітика, оцінки, прогнози: міжнародна колективна монографія / за заг. ред. Бисаги Ю.М., Бєлова Д.М., Берч В.В., Дешко Л.М., Заборовського В.В. та Продан В.І. Ужгород: Видавничий дім «РІК-У», 2023. 275 с.

3. Поличко Т., Бисага Ю., Берч В., Дешко Л., Нечипорук Г., Петрецька Н. Верховенство конституційних норм у національній системі права. Ужгород: ТОВ «РІК-У», 2021. 220 с.

4. Совгиря О. Інститут референдуму у позиціях зарубіжних конституційних судів: перспективи розвитку судового конституціоналізму в Україні. Сучасні виклики та актуальні проблеми судової реформи в Україні : матеріали IV Міжнар. наук.-практ. конф. (Чернівці, 16 жовтня 2020 р.) / ОБСЄ; Чернівецький нац. ун-т ім. Ю. Федьковича та ін. Київ : ВАІТЕ, 2020. С. 211-213.

5. Дешко Л. Право судді на повагу до приватного життя, право на захист персональних даних, професійна репутація та притягнення судді до дисциплінарної відповідальності: правові позиції Суду ЄС. Юридичний електронний науковий журнал. 2024. №11. С. 602-604.

6. Дешко Л. Дисциплінарна відповідальність судді національного суду: реформа законодавства Польщі та роль Суду ЄС в відстоюванні верховенства права та захисті цінностей ЄС. Право і суспільство. 2024. №5. С. 510-516.

7. Дешко Л. Верховенство права, незалежність судової влади як цінності ЄС та дисциплінарна відповідальність судді в державах-учасницях ЄС (за матеріалами практики Суду ЄС). Правова позиція. 2024. №4. С. 60-64.

8. Barber N. W. The Principles of Constitutionalism. Oxford University Press, 2018. 240 p.

9. Deshko L., Boiko V. Striking a balance: the interplay of CJEU rulings and international human rights obligation with national constitutional identities Науковий вісник Ужгородського національного університету. Серія: Право. 2023. №80. С. 124-129. URL: https://visnyk-juris-uzhnu.com/wp-content/uploads/2024/01/19.pdf.

10. Deshko L., Vasylchenko O. Regime of military occupation, human rights, elections and referendums: case of Ukraine. Аналітично-порівняльне правознавство. 2024. №1. С. 121-125. URL: https://app-journal.in.ua/wp-content/uploads/2024/03/22.pdf.

11. Бисага Ю. М., Дешко Л. М., Нечипорук Г. Ю. Міжнародна безпека, національна безпека, конституційна безпека: теоретико-правові підходи. Порівняльно-аналітичне право. 2020. Вип. 4. С. 43–49.

12. Конституція України. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

13. Висновок Конституційного Суду України у справі за зверненням Верховної Ради України про надання висновку щодо відповідності проекту Закону України «Про внесення змін до статті 98 Конституції України» вимогам статей 157 і 158 Конституції України (справа про внесення змін до статті 98 Конституції України) від 25 березня 1999 р. № 1-в/1999. URL: https://ccu.gov.ua/sites/default/files/docs/1-v-1999.pdf.

14. Рішення Конституційного Суду України у справі за конституційними поданнями Президента України та 48 народних депутатів України щодо відповідності Конституції України (конституційності) окремих положень законів України „Про вибори Президента України", „Про Державний реєстр

виборців", „Про внесення змін до деяких законодавчих актів України щодо виборів Президента України" та Кодексу адміністративного судочинства України (справа про внесення змін до деяких законодавчих актів України щодо виборів Президента України) від 19 жовтня 2009 р. № 26-рп/2009. URL: https://ccu.gov.ua/sites/default/files/ndf/26-rp/2009.doc.

15. Рішення Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо офіційного тлумачення положень частини другої статті 136, частини третьої статті 141 Конституції України, абзацу першого частини другої статті 14 Закону України „Про вибори депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів" від 29 травня 2013 р. № 2-рп/2013. URL: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fccu.gov.ua%2Fsites%2Fdefault%2Ffiles%2Fndf%2F2-rp%2F2013.doc&wdOrigin=BROWSELINK.

16. Рішення Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо офіційного тлумачення положень частини другої статті 136, частини третьої статті 141 Конституції України, абзацу першого частини другої статті 14 Закону України „Про вибори депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів" від 29 травня 2013 р. № 2-рп/2013. URL: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fccu.gov.ua%2Fsites%2Fdefault%2Ffiles%2Fndf%2F2-rp%2F2013.doc&wdOrigin=BROWSELINK.

17. Рішення Конституційного Суду України у справі за конституційними поданнями виконуючого обов'язки Президента України, Голови Верховної Ради України та Уповноваженого Верховної Ради України з прав людини щодо відповідності Конституції України (конституційності) Постанови Верховної Ради Автономної Республіки Крим „Про проведення загальнокримського референдуму" (справа про проведення місцевого референдуму в Автономній Республіці Крим) від 14 березня 2014 р. № 2-рп/2014. URL: https://ccu.gov.ua/sites/default/files/ndf/2-rp/2014.pdf.

18. Рішення Конституційного Суду України у справі за конституційним поданням виконуючого обов'язки Президента України, Голови Верховної Ради України щодо відповідності Конституції України (конституційності) Постанови Верховної Ради Автономної Республіки Крим „Про Декларацію про незалежність Автономної Республіки Крим і міста Севастополя" від 20 березня 2014 р. № 3-рп/2014. URL: https://ccu.gov.ua/sites/default/files/ndf/2-rp/2014.pdf.

19. Висновок Конституційного Суду України (Велика палата) у справі за конституційним зверненням Верховної Ради України про надання висновку щодо відповідності законопроєкту про внесення змін до статті 81 Конституції України (щодо додаткових підстав дострокового припинення повноважень народного депутата України) (реєстр. № 1027) вимогам статей 157 і 158 Конституції України від 24 грудня 2019 р. № 9-в/2019. URL: https://ccu.gov.ua/sites/default/files/docs/9_v_2019.pdf.

ПРАВО НА УЧАСТЬ В УПРАВЛІННІ ДЕРЖАВНИМИ СПРАВАМИ: ПРАВОВІ ПОЗИЦІЇ КОНСТИТУЦІЙНОГО СУДУ УКРАЇНИ

У статті зазначається, що в умовах збройної агресії росії щодо України актуальними питаннями є розвиток конституціоналізму в Україні та ефективне управління державними справами в умовах дії правового режиму воєнного стану. Елементом конституціоналізму є судовий конституціоналізм. Його розвиток відбувається не лише завдяки безпосередньому застосуванню норм Конституції України, а завдяки поєднанню в єдине ціле правових позицій Конституційного Суду України. Звертається увага на те, що є досвід зарубіжних держав, коли, реформуючи своє національне законодавство щодо права на участь в управлінні державними справами і маючи висновки конституційного суду держави про відповідність законопроєкту нормам конституції, насправді відбувся не прогрес у розвитку конституціоналізму, а регрес та

грубе порушення принципу верховенства права.

У науковій статті встановлено, що щодо гарантованого частиною 1 статті 38 Конституції України права кожного громадянина брати участь в управлінні державними справами правові позиції Конституційного Суду України містяться у висновку Конституційного Суду України у справі про внесення змін до статті 98 Конституції України від 25 березня 1999 р. № 1-в/1999; рішенні Конституційного Суду України у справі про внесення змін до деяких законодавчих актів України щодо виборів Президента України від 19 жовтня 2009 р. № 26-рп/2009; рішенні Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо офіційного тлумачення положень частини другої статті 136, частини третьої статті 141 Конституції України, абзацу першого частини другої статті 14 Закону України „Про вибори депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів“ від 29 травня 2013 р. № 2-рп/2013; рішенні Конституційного Суду України в справі за конституційним поданням 48 народних депутатів України щодо офіційного тлумачення положень частини другої статті 136, частини третьої статті 141 Конституції України, абзацу першого частини другої статті 14 Закону України „Про вибори депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів“ від 29 травня 2013 р. № 2-рп/2013; рішенні Конституційного Суду України у справі про проведення місцевого референдуму в Автономній Республіці Крим від 14 березня 2014 р. № 2-рп/2014; рішенні Конституційного Суду України в справі за конституційним поданням виконуючого обов'язки Президента України, Голови Верховної Ради України щодо відповідності Конституції України (конституційності) Постанови Верховної Ради Автономної Республіки Крим „Про Декларацію про незалежність Автономної Республіки Крим і міста Севастополя“ від 20 березня 2014 р. № 3-рп/2014; висновку Конституційного Суду України (Велика палата) у справі за конституційним зверненням Верховної Ради України про надання висновку щодо відповідності законопроєкту про внесення змін до статті 81 Конституції України (щодо додаткових підстав дострокового припинення повноважень народного депутата України) (реєстр. № 1027) вимогам статей 157 і 158 Конституції України від 24 грудня 2019 р. № 9-в/2019.

У результаті проведеного в статті аналізу вище зазначених рішень Конституційного Суду України виділено правові позиції Суду. Зазначається, що вони мають слугувати орієнтиром при вдосконаленні чинних законів, що розвивають норми Конституції України, які закріплюють право громадянина на участь в управлінні державними справами, розробці нових законів з огляду на європейську інтеграцію України та окупацію росією частини територій України, розвитку практики Конституційного Суду України.

Ключові слова: право громадянина на участь в управлінні державними справами, конституціоналізм, конституційні цінності, судовий конституціоналізм, рішення Конституційного Суду України, тлумачення, правова позиція Конституційного Суду України.