

А. Гальчинського, О. Донія та інших, в яких комплексно розглянуто етапи творення української державності та політичної нації.

Опублікування монографії російською мовою засвідчує повагу до права національних меншин на використання рідної мови. Однак це не має передбачати нехтування державною мовою. Тому праця заслуговує на перевидання українською, ба навіть англійською, а україномовні навчальні посібники будуть якісним доповненням для молодих учасників навчально-виховного процесу.

Правильно критикуючи недоліки української юридичної термінології («гілка влади» – с. 292, «судівництво» – с. 320), автори інколи демонструють написання слів, не відомих російській мові: «юридико-правовых» (с. 7, 264), «статуарной» (с. 155, 331), «целепологания» (с. 241, 256), «эманация» (с. 291), «иностранство» (с. 368), «стадийности» (с. 476).

Окрім того, в процесі редакторської підготовки варто розглянути можливість щодо: розташування підрозділів 3.3 та 4.6 як завершальних; об'єднання тема-

тично споріднених підрозділів; усунення повторів у назві розділів 4 і 7; уточнення джерельної бази (прикладом, відсутні посилання при цитуванні слів народного депутата – с. 103, статтю В. Кампо датовано 2001 роком замість 2011 року – с. 64, № 3).

На підставі наведених вище положень можна зробити переконливий висновок: оприлюднена монографія є важливим етапом у розвитку науки конституційного права України, фундаментальним доробком, що підсумовує результати всебічного дослідження витоків, традицій, поступу в царині конституціоналізму за тривалий історичний період. Проте наукова праця є вкрай необхідною не лише для цілісного бачення минулого конституційних перетворень, а й шляхів їх майбутніх змін у нових цивілізаційних умовах, викликаних часом. Цьому закономірно та органічно слугує змістовний і критичний аналіз конституційної проблематики, який конкретизує й взаємопов'язує методологічні орієнтири при вивченні предмета дослідження з фактичним нормативним матеріалом, що підкреслює практичну цінність монографії.

4

Constitutional Relations in Ukraine: Experience, Contradictions, European Context

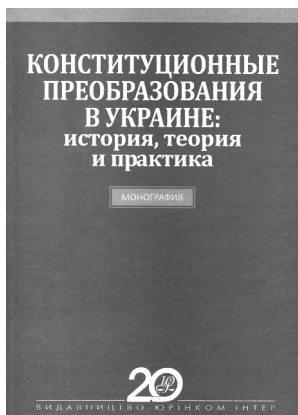
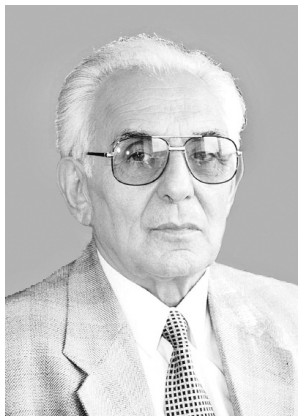
Leonid RIABOSHAPKO,
Doctor of Juridical Science,
Professor of the King Danylo
Galytskyi
University of Law of Ivano-Frankivsk

Intensive research regarding the establishment of Ukrainian constitutionalism has become of great importance since the dramatic civil conflict (November 2013 – February 2014) which is to be named the Revolution of Dignity. It has obviously created the unbiased political and legal pre-conditions to terminate the imitation of democratic reforms, to strengthen the role of citizens as subjects of the political process, and to implement an essentially different philosophy of legal policy.

Nevertheless, consistent changes of pro-European dimensions, which are urgently required by the majority of Ukrainian

society, will remain fragmentary or without prospects if they are not conceptually developed by research workers at the cross-disciplinary level. The primary position among them belongs to the specialists in constitutional law. They are constantly making theoretical and practical generalizations concerning different aspects of constitutional background. To affirm that, a new monograph* published in September 2013 should be referenced. Its authoring team includes well-known lawyers from Odesa and Kyiv headed by Professor Mark Orzikh. This research provides an impetus to independent reflection, dialogue, reasonable polemic, as well as inducing the need of not being apathetic to the significant events of Ukrainian state development.

The structure of the monograph is logically divided into thematic chapters. Each represents some issues which are inherent to the categories of constitutionalism as a whole or, in particular, the institutes of constitutional law. In determining the historical sources of constitutionalism the authors rely on the theoretical and methodological principles which (to a great or less extent) laid the foundation for constitutional transformations. They gradually and consistently expose the contradictory ways of forming the regulatory model of the constitutional model through the adoption of the Declaration of State Sovereignty of the Ukrainian SSR of 1990, the analysis of alternative constitutional projects, the circumstances of the adoption of the Constitutional Agreement (a new source of law) between the Verkhovna Rada of Ukraine and the President of Ukraine of 1995, as well as the Constitution of Ukraine of 1996. By exploring the activities of public authorities, the authors analyze the implementation of the political reform of 2004 and its subsequent abolition according to the decision of the Constitutional Court of Ukraine of 30 September 2010, and the main directions of modernization



*Book review: Constitutional transformations in Ukraine: history, theory, practice: Monograph (2013). M. Orzikh (ed.), A. Krusian, V. Shapoval, and others. Киев: Юринком Интер.



regarding public authoritative bodies including their constitutional and legal regulation.

These general concepts imply the analysis of the reasons for the inconsistent establishment and development of parliament institutions, the president, local administrations, courts and civil society. The authors extensively discuss the neglect of scientific achievements (p. 51); the absence of European legal consciousness and law enforcement regarding the concepts of 'the spirit' and 'the letter' of the Constitution; the rule of justice and law (pp. 6, 54, 98, 150, 151); the perfunctory reception of Western legal standards (p. 55); recurrent transformations of the form of state rule and the domination of club law over the written (p. 228); the dominant formal and positive approaches of the Constitutional Court of Ukraine and courts of general jurisdiction, as well as the mindset of post-Soviet judges (pp. 320, 321, 326, 327); the erosion and marginalization of cultural and spiritual values (p. 423), etc. For instance, local self-administrations have experienced negative consequences of the above-mentioned phenomena because "instead of the natural democratic process of bottom-up 'growth' regarding the competence of government authorities and its top-down distribution, there is a reversed pyramid of power previously unknown to world political science that is formalized through the constitutional postulate on the nation which simultaneously realizes its power via governmental institutions and local self-administrations" (p. 331). Authors pay particular attention to suggestions on further constitutional reforms which "would not distort the constitutional perspective" (p. 5). These should encourage the improvement of the Basic Law, constitutional legislation and law enforcement that is the functioning of the Constitutional Assembly and the adoption of a number of codes, e.g. on the rights and freedoms of a man and the citizen, on elections, on municipal administration, etc. (pp. 499, 508).

In addition, it should be stressed that various background information accompanies each chapter: historical retrospective, justified scientific comments, accurate quotations of Ukrainian and foreign humanitarian literature, numerous examples of the implementation of constitutional norms combined with elements of constructive criticism. On the one hand, such a presentation of the material, which is arranged according to the vision of the integral authors, promotes a better understanding of the nature, complexity and scale of constitutional legal relationships. On the other hand, it gives the authors an opportunity to illustrate all the variety of contexts of constitutional reforms which have taken place during the 22 years of existence of the Ukrainian state.

Taking into consideration the multidimensional nature of the reviewed research, it is reasonable to distinguish the issues which are and will be of the greatest significance for our country, and have a decisive influence regarding the expected reforms of state institutions and the renewal of Ukraine's pro-European course.

First of all, the authors reasonably emphasize the necessity of correct methodological inter-relations while interpreting the concepts of state, territorial and administrative and territorial systems; the prohibition of 'simplification' of these terms (p. 402); the incumbent combination of administrative and territorial reforms with future constitutional changes (otherwise they are bound to be defeated). At the same time, the success of administrative and territorial reforms would fully depend on the choice of state structure. Searching for answers, the scientists apply the method of scientific historicism indicating exact historical and legal examples of "federative tendencies in Ukraine" (p. 404). However, taking into account the current political, economic, demographic and other realities, the authors propose a grounded conclusion on the optimal state structure for Ukraine as a "unitary constitutionally decentralized state with territorial autonomy, i.e. the Autonomous Republic of Crimea" (p. 406). They do not limit themselves to this statement and also suggest an innovative constitutional model of administrative and territorial structure (pp. 413-416) which is "universal for any political solution regarding the state structure of Ukraine" (p. 416).

The next priority task of constitutional reforms is to continue implementing the European vector for the development of Ukraine. This research direction is also presented over a whole range of issues. For example, according to M. Orzikh, the state

authoritative bodies should "be creative and without formal consideration implement the recommendations" (p. 68) of foreign institutions while applying European practices regarding "the standards of constitutional changes of governmental and social spheres" (p. 69). The other author N. Mishyna suggests bringing the constitutional norms into proximity with the European legal environment. For instance, the necessity to distinguish the concepts of constitutional law and state law (p. 487), to apply "such a new European development as the concept of corporate social responsibility" (p. 489), to enshrine in law the biological human rights (p. 490), etc. is stressed.

Therefore, in summarizing the contents of the prominent scientific work of famous constitutionalists we should acknowledge that it deserves a thorough study. Nevertheless, after the monograph had been published, new circumstances have emerged, since Ukraine is being changed by political struggle, social crisis, a malfunction of the political and legal system, and, after all, by the sacrifices and courage of the Ukrainian nation which is striving for a genuine democratization of all spheres of social relationships.

From this point of view, we have reasons to reconsider the state of constitutional legislation, and, therefore, to recommend the preparation of a second edition of the monograph which would give the opportunity to revise, complete and improve the authors' ideas. The authoring team is undoubtedly able to do that since it includes prominent scientific and pedagogical specialists who have demonstrated professional skills while researching complex constitutional problems. Therefore, we consider it appropriate to share our thoughts on the matter.

For example, the authors could also offer the reader an analysis of the role of the Church as a mediator in political and legal conflicts, the importance of civil society in opposing the usurpation of power by certain state officials during the Euromaidan events, the guarantee of legal forms of democratic civil control over state authoritative bodies. The signature of the political part of the Association Agreement between Ukraine and the European Union on 21 March 2014 would also provide them with the opportunity to amplify corresponding chapters.

The authors' position as for the mechanisms regarding the establishment of civil society institutions remains arguable, too. The scientists are correct in indicating in Chapter 6.1 the dependence of civil society development on "the civil activity of people, their readiness and desire to stand up for their interests and rights" (p. 350). Simultaneously, it seems that the examples of the realization of such a civil position are underestimated. Thus, the forgotten names of Ukrainian patriots O. Girnyk and V. Makukha who performed the acts of self-immolation in 1969 and 1978 protesting the Russification of the Ukrainian SSR were not brought up in the scientific work. 'The Revolution on Granite' of 1990 is superficially characterized as "so called" or a "massive student riot" (p. 84), and the collocation Orange Revolution is double quoted for unknown reasons (p. 72). The authors do not completely make mention of the Decree of the President nominating the day of the beginning of the Orange Revolution – 22 November – to be celebrated as the Day of Freedom. In both cases, the names of the events, which were of significant importance while acquiring the independence of Ukraine and ensuring the elective rights of its citizens, are written with lower case initial letters.

On the contrary, the October coup of 1917 is called as "the October Revolution" (p. 22) which is proud and traditional for Soviet state law. The act of aggression of the Russian Federation against Ukraine in 2014 which resulted in the annexation of part of a sovereign state territory would probably help the authoring team to understand the far-reaching psychological and mindset consequences of 'the October revolution' for the post-Soviet, post-totalitarian, post-genocide Ukrainian nation. Hence, it would be beneficial to enrich the reviewed scientific work with the quotations of the publications of V. Vasylenko, A. Galchynsky, O. Donii and others providing a complex analysis of the different stages of Ukrainian state and political development.

The publication of the monograph in Russian proves the respect for the minorities' right to use their native language. Nevertheless, it should not be equal to a disregard of the state

language. Therefore, the work deserves to be republished in Ukrainian or even in English, and handbooks in Ukrainian would become a valuable addition to the learning process of young specialists.

Along with justified criticism of the drawbacks of Ukrainian legal terminology (pp. 292, 320), the authors sometimes use terms which are unknown to the Russian language (pp. 7, 264, 155, 331, 241, 256, 291, 368, 476).

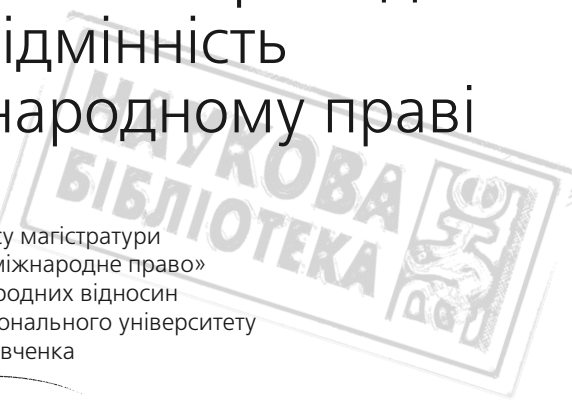
Moreover, during the editorial process it is worth considering the following: to put chapters 3.3 and 4.6 as concluding; to merge topically similar chapters; to remove repeated words in the names of chapters 4 and 7; to itemize the sources (e.g., there is no reference to the source while quoting the words of the People's Deputy (p. 103); the article of V. Kampani is dated back to 2001 instead of 2011 (p. 64, № 3), etc.).

On the basis of the above-mentioned provisions we can make a convincing conclusion: the publication of this monograph has made an important contribution to the development of the science of Ukrainian constitutional law and has become a fundamental study summarizing the results of a comprehensive research of sources, traditions and development of constitutionalism for a long historical period. However, this scientific work is not only necessary for a wholesome understanding of the past of constitutional reforms, but also for an elaboration of the ways concerning their future development due to the challenges of modern civilization. The comprehensive and critical analysis of constitutional problems helps to do that in a logical and seamless way. This analysis clarifies methodological basics and connects them with actual legislative background while researching the subject that constitutes the practical value of the monograph.



Сутність понять «шпигун» і «військовий розвідник» та їх відмінність у міжнародному праві

Яна ПАВКО,
студентка II курсу магістратури спеціальності «міжнародне право» Інституту міжнародних відносин Київського національного університету імені Тараса Шевченка



На основі використання класичних джерел із міжнародного гуманітарного права, новітніх вітчизняних та зарубіжних досліджень у царині міжнародно-правової науки здійснено спробу визначити сутність понять «шпигун» та «військовий розвідник», проаналізувати міжнародно-правовий статус військового розвідника та з'ясувати його відмінність від правового статусу шпигуна.

Ключові слова: шпигун, військовий розвідник, міжнародне право, право війни.

На основе использования классических источников по международному гуманитарному праву, новейших отечественных и зарубежных исследований в сфере международно-правовой науки осуществлена попытка определить сущность понятий «шпион» и «военный разведчик», проанализировать международно-правовой статус военного разведчика и определить его отличие от правового статуса шпиона.

Ключевые слова: шпион, военный разведчик, международное право, право войны.

Право війни, або збройних конфліктів, є важливою галуззю міжнародного гуманітарного права і посідає чільне місце в доктрині сучасного міжнародного права. Наприклад, академік В. Грабар уважав, що питання взаємовідносин війни та міжнародного права завжди мали першорядне значення і становили основну проблему міжнародно-правової науки [9, с. 66]. На думку відомого правознавця Ф. Мартенса, «право війни в об'єктивному значенні є сукупністю юридичних норм, законів та звичаїв, які визначають дії держав та їхніх збройних сил під час війни» [7, с. 327].

У цьому сенсі слід зазначити, що міжнародне право виникло переважно як право війни. Так, праця відомого

голландського юриста Г. Гроція, що вийшла друком ще 1625 року під назвою «Про право війни та миру», в основному фокусувалася на визначенні норм і принципів міжнародного гуманітарного права, які мали застосовувати перед початком війни і безпосередньо під час бойових дій. Провівши аналіз значного обсягу історико-правового матеріалу, вчений дійшов висновку: за умови надання християнським народам права на ведення війни, вони зобов'язані поважати невід'ємні права людини і обмежувати своє свавілля та насильницькі дії.

Виконуючи основне завдання щодо максимально можливого обмеження руйнівного впливу війни на життя і розвиток людської цивілізації, право збройних