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ЗАПРОВАДЖЕННЯ ПОНЯТТЯ «СТАЛИЙ РОЗВИТОК» У КОНТЕКСТІ КОНСТИТУЦІЙНОЇ РЕФОРМИ УКРАЇНИ

Анотація. На шляху розвитку інтеграційних процесів Україна потребує комплексного та системного оновлення законодавчих та нормативно-правових актів в тому числі і Конституції України. Стаття присвячена обґрунтуванню основних принципів та практичних шляхів реалізації новітніх підходів до конституційно-правового забезпечення соціальних та гуманітарних перетворень в Україні в контексті світових тенденцій сталого розвитку, а також проблемі практичного впровадження конституційних основ існування Української держави. Зазначається, що стратегічним бажанням України є формування власного майбутнього на основі принципів сталого розвитку з метою впровадження європейських стандартів життя та досягнення провідних позицій у світі. Також відзначається відсутність якісних зрушень у здійсненні соціально значущих реформ, спрямованих на розробку принципово нових підходів до стратегічних напрямків соціально-економічного та політичного розвитку країни в короткостроковій перспективі в контексті реалізації Декларації тисячоліття, яка визначає всебічну систему цінностей, принципів та ключових цінностей згідно з трьома основними мандатами ООН: мир та безпека; розвиток; права людини. Зроблено висновок, що за два десятиліття з моменту

офіційного введення поняття «сталий розвиток», воно вже вийшло із суто наукового терміну й широко застосовується світовим співтовариством (зокрема, в актах ООН) та вітчизняною політичною елітою не лише в нормативно-правових документах, а й у повсякденних комунікаціях. Актуальність започаткування конституційної реформи в Україні передбачає виправлення суттєвих недоліків, які з різних причин існують у Конституції, та звернення до різних інституцій у сферах вдосконалення механізму державної влади (форми правління); створення конституційних передумов для децентралізації; зміцнення незалежності та професіоналізму судової влади тощо.

Ключові слова: міжнародний досвід, регуляторна підтримка, конституційний порядок, юридична сила, політичний розвиток держави.

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INTRODUCTION OF THE CONCEPT OF SUSTAINABLE DEVELOPMENT IN THE CONTEXT OF THE CONSTITUTIONAL REFORM OF UKRAINE

Abstract. *On the way to the development of integration processes, Ukraine needs a comprehensive and systematic update of laws and regulations, including the Constitution of Ukraine. The article is devoted to substantiation of the basic principles and practical ways of implementing the newest approaches to the constitutional and legal support of social and humanitarian transformations in Ukraine in the context of world tendencies of sustainable development, as well as the problem of practical implementation of the constitutional foundations of the existence of the Ukrainian state. It is noted that the strategic will in Ukraine is to form our own future based on the principles of sustainable development in order to implement in our country European standards of living and to reach leading positions in the world. It is also noted*

the lack of qualitative shifts in the implementation of socially significant reforms to aim in developing fundamentally new approaches to the strategic directions of socio-economic and political development of the country in the short term in the context of the implementation of the Millennium Declaration, which is defined a comprehensive framework of values, principles and key values under three major UN mandates: peace and security; development; Human Rights. It is concluded that in two decades since the official introduction of the concept of “sustainable development” has already come out of the purely scientific term, and is widely used by the world community (in particular, in UN acts) and the domestic political elite not only in the normative-legal documents, but also in everyday communications. The urgency of launching constitutional reform in Ukraine involves correcting the substantive deficiencies that exist in the Constitution for various reasons and referring to different institutions in the areas of improvement of the mechanism of state power (forms of government); creation of constitutional preconditions for decentralization; strengthening the independence and professionalism of the judiciary etc.

Keywords: international experience, regulatory support, constitutional order, legal force, political development of the state.

INTRODUCTION

Our country, like the rest of the world, has a great need of professional scientific justification for the basic principles and practical ways of implementing the latest approaches to constitutional and legal support for social and humanitarian transformations in the context of world trends in sustainable development. Now Ukraine is going through an extremely difficult stage of its own state, when the very possibility of practical implementation of the constitutional foundations of the existence of the Ukrainian state is questioned. The Ukrainian people de facto cease to be the bearer of sovereignty and the only source of power in the state, but are held hostage to the engaged leaders of power institutions, for which patriotism and national dignity are often replaced, under a veil of political expediency, by the interests of transnational corporations. Analysis of recent research and publications shows that, according to many domestic and foreign lawyers, the Constitution of Ukraine¹ today loses the highest legal force in the state, its norms cease to be norms of direct effect, and certain provisions enter into antagonistic contradictions with modern realities of social, political and economic life in the country, and then it ceases to be a reliable foundation of the Ukrainian state. M. Orzikh, A. Yezerov [1] – point out, “however perfect the is Constitution..., there comes a time when it ceases to be partially or completely in line with the dynamically developing social relations”; V. Hrytsyk [2] – indicates that “the constitutional process in Ukraine in recent years can be compared to the snow ball, which rolls, accumulating on itself, as snow, more and problems”; Yu. Shemshuchenko, O. Batanov, A. Krusian et al. [3] – define the main trends in the development of domestic constitutionalism: substitution of the principle of the rule of law and the Constitution of Ukraine with the principle of political expediency; increasing the influence of civil society on the functioning of state institutions and mechanism, etc.

Direct violations of the Basic Law² have become an axiom in Ukraine and are not only obvious to legal specialists, namely:

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-bp>

²*Ibidem*, 1996

- the sovereignty of Ukraine does not extend to the whole territory of the country, our country is not indivisible and inviolable within the existing border (Art. 2¹);
- for officials of all levels, especially supporters of paternalism, it is not obligatory to have a single citizenship of Ukraine (Art. 4²);
- the right to change the constitutional order in Ukraine, the organization of state power and local self-government, territorial structure, national security pillars and other important institutions of constitutional and legal relations in Ukraine are in fact usurped by the state, its bodies and public officials (Art. 5³);
- recourse to the courts for the protection of constitutional human rights and freedoms directly on the basis of the Constitution of Ukraine⁴ is not guaranteed (Art. 8⁵);
- the free development, use and protection of Russian and other languages of national minorities of Ukraine is not guaranteed (Art. 10⁶).
- the right of ownership of the Ukrainian people to land, its subsoil and other natural resources has passed to the state. The land ceased to be the main national wealth and lost special protection from the state (Art. 13, 14⁷).

The purpose of the article is the scientific and theoretical justification of the basic principles and practical ways of implementing the latest approaches to constitutional and legal support of social and humanitarian transformations in Ukraine in the context of world trends of sustainable development, as well as the provision of proposals for updating the Constitution of Ukraine on the basis of sustainable development.

The objectives according to the purpose are as follows: to provide specific reasons for introducing the concept of sustainable development into the Constitution of Ukraine; prove the relevance of constitutional and legal support for social and humanitarian transformations in Ukraine in the direction of sustainable development in new geopolitical realities in the near future.

1. CHARACTERISTIC OF CONSTITUTIONAL COMPLAINT AS A POTENTIALLY EFFECTIVE MEANS OF PROTECTING HUMAN RIGHTS

As a result of the constitutional reform of the sphere of justice, Ukraine has established a new constitutional right to a constitutional complaint. On June 2, 2016, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Constitution of Ukraine (relating to justice)”⁸ which provides for a new constitutional mechanism for the protection of the rights and freedoms of natural and legal persons through the introduction of the institution of a constitutional complaint. Constitutional changes came into force on September 30, 2016. In accordance with article 151-1 of the Basic Law⁹,

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп>

² *Ibidem*, 1996

³ *Ibidem*, 1996

⁴ *Ibidem*, 1996

⁵ *Ibidem*, 1996

⁶ *Ibidem*, 1996

⁷ *Ibidem*, 1996

⁸ Law of Ukraine No. 1401-VIII “On Amendments to the Constitution of Ukraine (relating to justice). (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1401-19>.

⁹ Constitution of Ukraine, op. cit.

the Constitutional Court of Ukraine decides on the constitutionality of the law of Ukraine on the constitutional complaint of a person who considers that the law of Ukraine applied in his or her final court decision is contrary to the Constitution of Ukraine. A constitutional complaint may be filed if all other domestic remedies have been exhausted. Under article 55, paragraph 3, of the Constitution, everyone is guaranteed the right to file a constitutional complaint with the Constitutional Court on the grounds established by the Constitution and in accordance with the procedure established by law. At the same time, a number of issues related to the further realization of this right in Ukraine remain unresolved and require much more active scientific, expert and analytical attention. Since everyone knows that judicial practice is still being formed in another way, and previous versions of the procedural codes have hardly developed, the principle contained in article 8¹ of the Basic Law significantly hinders the already not too big activity of judges in approving the supremacy of the Constitution of Ukraine. But if the courts have not yet been able to apply the Constitution correctly, what could be demanded of other participants in public relations, including politicians, ordinary representatives of public authorities or “ordinary citizen” [4].

On the basis of statistical information received by the Registrar of the Constitutional Court of Ukraine as of June 24, 2019, 1,539 constitutional complaints were registered, in particular, in 2016 there were 39, in 2017 – 435, in 2018 – 690, in 2019 – 375 constitutional complaints (Figure 1) [4].

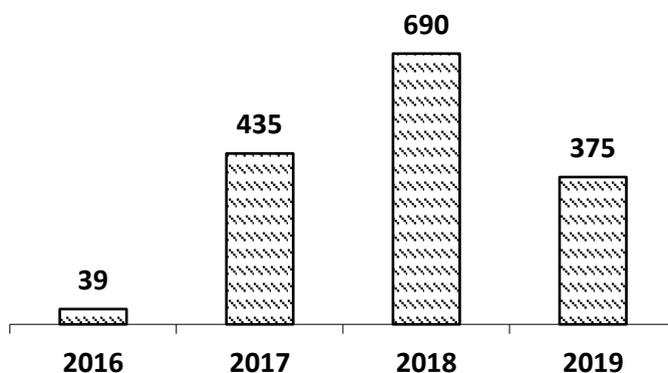


Figure 1. Number of constitutional complaints received and registered with the Registrar of the Constitutional Court of Ukraine from October 2016 to June 2019

Of the registered 1.539 constitutional complaints, 996 were returned to the subject of the appeal because of the non-compliance of its form with the requirements of the Law of Ukraine “On the Constitutional Court of Ukraine”²; 529 – distributed to the reporting judges; 14 – were under consideration in the Registrar of the Constitutional Court of Ukraine (Figure 2) [4].

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп>

² Law of Ukraine No 2136-VIII “On the Constitutional Court of Ukraine”. (2017, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2136-19#Text>

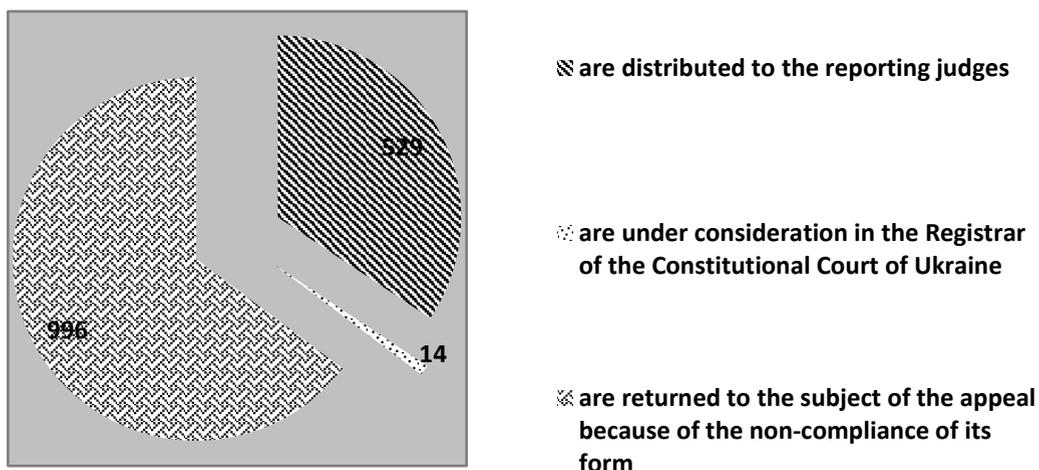


Figure 2. Number of registered constitutional complaints as of 24.06.2019

The issues raised by the subjects of the right to a constitutional complaint, on which constitutional proceedings were opened in 2018, concerned: pension and social law – 24%; civil procedural law – 10%; State budget of Ukraine – 8%; law of criminal procedure – 21%; economic procedural law – 5%; administrative offence – 5%; administrative proceedings – 5%; financial law – 11%; labour law – 11% [4].

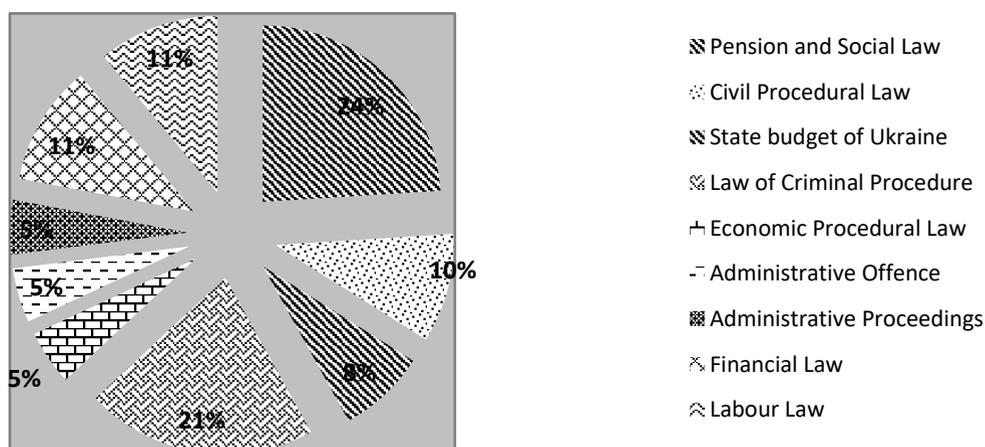


Figure 3. Issues raised by subjects of the right to a constitutional complaint, on which constitutional proceedings were opened in 2018

As Figures 1-3 show, the high expectations of a constitutional complaint as a potentially effective means of protecting human rights have not been fully met for the day. Today the society expects more active consideration and decision-making on constitutional complaints from the Constitutional Court of Ukraine. The level of legal literacy (professional qualifications) of the subjects of the appeal is one of the problems that can be

identified in the implementation of a constitutional complaint, which is confirmed by the data provided on the return of complaints to the subjects of the appeal or the decision to refuse to accept by a collegium or senate of the Constitutional Court of Ukraine. Only well-trained legal professionals can understand the complex issues of constitutionality, the fundamental nature of human rights and freedoms, the systemic relationship between the law and the provisions of the Constitution of Ukraine¹. And this in turn affects the access to justice for the ordinary citizen [4].

The analysis suggests that this is not a complete list of direct violations of the Constitution of Ukraine, which not only hinder state construction, but also threaten the future of Ukrainian independence. Today, there is an objective need to revise the fundamental principles of the Ukrainian state and to develop fundamentally new approaches to the strategic directions of the social, economic and political development of the state in the near future in the new geopolitical realities caused by the annexation of the Crimean peninsula, the unflagging hybrid aggression by the Russian Federation, permanent outbreaks of pandemics (such as Swine influenza, COVID-19, etc.), as well as regular world economic crises [5-7].

2. ANALYSIS OF THE IMPLEMENTATION OF THE SUSTAINABLE DEVELOPMENT STRATEGY IN UKRAINE

UN Millennium Development Goal, which was adopted in 2000, by 189 countries at the UN Millennium Summit, and which established a comprehensive framework of values, principles and key factors of development under the three core UN mandates: peace and security; development; human rights, is the modern guide to human development for the entire civilized world. The road map for the implementation of the Millennium Development Goal proposed a set of eight universal goals, with specific time frames and quantitative indicators, aimed at eliminating all major obstacles to the decent life of every human being in any society, namely, the eradication of hunger and extreme poverty; access to education; ensuring gender equality; reducing maternal and child mortality; reducing HIV/AIDS and other diseases; environmental sustainability and harmonization of external assistance for developing countries [8].

For 15 years, the Millennium Development Goals have been a driving force for reducing income poverty, ensuring critical access to water and adequate sanitary conditions, reducing child mortality and substantial improvement in maternal health [9-11]. They have also given a boost to the global movement for free primary education, encouraging countries to invest in future generations. Above all, however, the Millennium Development Goals have achieved tremendous success in the fight against HIV/AIDS and other curable diseases, in particular malaria and tuberculosis. The main achievements in the implementation of the Declaration (compared to 1990) were: more than 1 billion people were saved from extreme poverty; child mortality and the number of out-of-school children decreased by more than half; HIV/AIDS cases fell by almost 40% (compared to 2000) [12]. In September 2015, within the 70th session of the UN General Assembly, the world community defined new guidelines for the development of mankind for the next fifteen years (2015-2030), called Transforming our world: The 2030 Agenda for Sustainable Development and presented in the form of seventeen global

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп>

Sustainable Development Goals, namely, poverty reduction; overcoming hunger, developing agriculture; good health and well-being; quality education; gender equality; clean water and adequate sanitary conditions; clean and affordable energy; decent work and economic growth; industry, innovation and infrastructure; inequality reduction; sustainable urban and community development; responsible consumption and production; mitigation of climate change; marine resources conservation; protection and restoration of terrestrial ecosystems; peace, justice and strong institutions; partnership for sustainable development [13].

Ukraine, by participating in the historic United Nations Summit for Sustainable Development in Rio de Janeiro (Rio+20), has clearly demonstrated its strategic freedom to shape its own future on the basis of the principles of sustainable development. Along with other countries, our country has worked hard to realize the Millennium Development Goals determined by the results of the UN Millennium Summit held in 2000. Thus, in January 2015 the Strategy of Sustainable Development “Ukraine – 2020” was approved by the Decree of the President of Ukraine P. Poroshenko¹, in which, in addition to general phrases about the transition to a new era of history and a unique chance to build a new Ukraine, a number of concrete practical measures were defined with the aim of introducing European standards of life in our state and reaching the leading positions in the world [14-16].

According to the Roadmap and first priorities for the implementation of the Strategy, 62 reforms and programmes for the development of the state were to be implemented within certain four vectors of movement (development, security, responsibility and pride). At the same time, the implementation of such reforms and programmes as national security organization and defence reform; power renewal and anti-corruption reform; judicial reform; reform of a law-enforcement system; decentralization and public administration reform; deregulation and enterprise development; reform of a health-care system; tax reform; program of energy independence; program of popularization of Ukraine in the world and promotion Ukraine's interests in the world information space were identified as priorities.

The analysis suggests that as of April 2020 none of the identified 25 key indicators assessing the implementation of reforms and programmes (it. 4. Strategic indicators of realization of the Strategy) are not reached. None of the announced reforms (programs) has been fully implemented, and in certain spheres of social and political life the situation has deteriorated on the contrary (small and medium-sized businesses, state customs and integration into the customs community of the EU, municipal housing economy, attraction of investments; optimization of the system of state authority; pension reform; reforms of health systems, education, culture, public policy in science and research). Of particular concern is the lack of qualitative changes in the implementation of socially significant reforms, such as the renewal (not the change of personalities) of power and anti-corruption reform; ensuring that everyone has the right to a fair trial by an independent and impartial court; the establishment of a professional institute of the public service; enabling local self-government and building an effective system of territorial organization of power, etc.

¹Decree of the President of Ukraine No. 5/2015 “On the Sustainable Development Strategy "Ukraine 2020””. (2015, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/5/2015>.

In September, 2019 the Global sustainable development goals till 2030 proclaimed the Resolution of the General Assembly of the United Nations of September 25, 2015 No. 70/1¹ were supported by the Decree of the President of Ukraine V. Zelenskyi² and the results of their adaptation taking into account specifics of development of Ukraine stated in the National report of “a sustainable development goals of Ukraine” and also definite purposes of sustainable development of Ukraine until 2030 [17]. According to the carried-out analysis, for two decades from the moment of the official introduction the concept “sustainable development” already left the plane of purely scientific term, and is rather widely used by the international community (in particular, in acts of the UN and the EU) and domestic political elite not only in standard and legal documents, but also in daily communications. However, the Constitution of Ukraine does not mention the term “sustainable development” at all, which introduces a certain dissonance into the general hierarchy of the domestic legal and regulatory framework, in a certain way makes it difficult to adapt Ukrainian legislation to world standards and prevents the full ratification of concluded contracts (agreements) with foreign partners.

Constitutional reform in Ukraine is objectively necessary not only to expand (updating) the conceptual framework, but also due to better reasons, in particular, the need to restore the legitimacy of the Basic Law as an act of constituent power. At present, this legitimacy is significantly undermined by legally questionable decisions of the constitutional process of the last ten years related to the desire of individual politicians to strengthen the power vertical [18]. Equally important is the urgency of the beginning of constitutional reform in Ukraine – the need to correct the substantive shortcomings that exist in the Constitution for various reasons and concern various institutions in the directions: improvement of the mechanism of state power (form of government); creation of constitutional foundations for decentralization; reinforcing the independence and professionalism of the judiciary; solution to the dilemma of ensuring a certain amount of social and economic human rights in the Constitution, etc. [19]. More specific reasons for introducing the concept of “sustainable development” into the text of the Constitution include.

First, Ukraine has sufficiently specific international commitments on sustainable development as defined by the UN strategic documents, in particular the UN General Assembly Decision No. 70/1 of 25 September 2015³ (17 global sustainable development goals covering 169 targets and 240 indicators), the Association Agreement between Ukraine and the EU regarding the introduction of innovative changes in Ukraine in the direction of sustainable development, etc. Secondly. Our country demonstrably needs a fundamental modernization of the strategic objectives, basic principles and public mechanisms of public administration of social and economic development in the direction of sustainable development in order to minimize the negative consequences of the dominance of resource and energy-intensive industries and technologies, the

¹Resolution of the General Assembly of the United Nations, No. 70/1. (2015, September). Retrieved from <https://undocs.org/A/RES/70/1>

²Law of Ukraine No. 1678-VII “On the ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community, and their Member States, of the other part” (2014, September). Retrieved from <https://zakon.rada.gov.ua/rada/show/1678-18>.

³UN General Assembly Decision No. 70/1. (2015, September). Retrieved from <https://www.google.com/search?q=%chrome.69i57&sourceid=chrome&ie=UTF-8#>

commodity orientation of exports, the excessive concentration of environmentally hazardous production in industrial regions and the like over the past decades. The third. The constitutional introduction of the term “sustainable development” creates a single conceptual basis for the purpose of analysing the level of social and economic development and well-being of the population, as well as compliance with the natural, scientific and technical, agricultural and industrial potential of Ukraine, the qualification and educational level of the population, and the social, historical and cultural traditions of the Ukrainian people. The fourth. The establishment of definitions, goals, objectives and mechanisms of sustainable development in the Basic Law will contribute to the improvement and more effective implementation of normative and legal acts in Ukraine, national, sectoral and regional documents. The fifth. Ukraine's transition to sustainable development is a sustainable concept for the domestic scientific school, has a proper theoretical justification, has undergone practical testing and enjoys appropriate public support.

The introduction of the term “sustainable development” in the text of the Constitution of Ukraine¹ should take into account that it is the official Ukrainian equivalent of the English term “sustainable development”, the literal translation of which, according to the context, can be “viable development” and, within the meaning of “self-sustaining development”, can also be interpreted as a comprehensively balanced development. According to the United Nations Commission on Sustainable Development, its purpose is to meet the needs of modern society without compromising the ability of future generations to meet their needs. The theory of sustainable development is an alternative to the paradigm of economic growth, which ignores the environmental danger from development according to an extensive model [20].

The constitutional entrenchment of the term “sustainable development” will contribute to the transition of Ukraine to the principles of sustainable development, will serve as the basis of legislative and institutional support for the system of public management of sustainable development, will improve the quality of life of the Ukrainian population and will achieve economic, social and environmental balance in the development of our country in practice. In addition, sustainable regional development will be achieved through the preservation of national cultural values and traditions and the harmonization of national and regional interests in all policy documents for sustainable regional development.

CONCLUSIONS

We are deeply convinced that the implementation of constitutional reform in Ukraine in the direction of sustainable development will allow:

- to overcome the imbalances that exist in the economic, social and environmental spheres of life more effectively;
- to ensure a state of the environment that will contribute to the quality of life and well-being not only of present but also of future generations;
- to create the necessary foundation for a social contract between government, business and civil society in order to improve the quality of life of citizens and ensure social, economic and environmental stability;

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп>

- to establish a system of public management of sustainable development;
- to take to a new qualitative level the partnership between state authorities, local self-government bodies, business, science, education and civil society organizations;
- to achieve a higher level of education and public health;
- to establish a constitutional framework for regional policies based on a harmony of national and regional interests;
- to fulfil Ukraine's international obligations in conditions of more effective preservation of national cultural values and traditions.

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