



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 18, SPECIAL ISSUE (2025)
ISSN 2029-0454



Cit.: *Baltic Journal of Law & Politics* 18 (2025): 34–55
[https://content.sciendo.com/view/journals/bjlp/
bjlp-overview.xml](https://content.sciendo.com/view/journals/bjlp/bjlp-overview.xml)
DOI: 10.2478/bjlp-2025-0004

IS IT POSSIBLE TO PRESERVE STATEHOOD WITHOUT PROTECTION OF NATIONAL IDENTITY? (SOME LESSONS FROM POST-SOVIET CONSTITUTIONALISM BASED ON THE EXPERIENCE OF UKRAINE)

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ABSTRACT

The collapse of the Soviet Union forced a new look at the issue of protecting national identity at the constitutional level. If within the framework of the existing integration schemes on the European continent, this problem was analysed in the projection of identity preservation on the basis of a common value base, then in the situation with the former post-Soviet states, we are dealing with several trajectories of the restoration (creation) of one's own statehood, again, with a different axiological basis. The Baltic countries, which were under the occupation of the Soviet regime, quickly resolved the issue of restoring statehood and formed constitutional mechanisms for the protection of national identity. In most of the rest of the post-Soviet space, due to the corruption of the elites, the preservation of the pro-communist lobby and the significant influence through various channels of the Russian government, issues of national identity have been pushed to the background. In addition, components of identity such as language, culture, and religion, in the post-Soviet interpretations, received several more important components, which, perhaps not directly, nevertheless had a significant impact on the formation of the national

“genocide” at the constitutional level. We mean the cleansing of the elites from the representatives of the former totalitarian regime and those who ensured its functioning, the definition of a clear geopolitical strategy, different from the desire to restore the Soviet Union in one form or another, as well as the definition of citizenship exclusively for persons for whom national statehood is not “empty sound”. The bodies of constitutional justice should have played an important role in these complex processes; however, as a product of an imperfect political system that imitated effective political democracy in certain moments, they acted hesitantly, only sometimes defending the interests of national identity. On the basis of the analysis of the post-Soviet practice of preserving and protecting national identity in new countries, this article examines how the constitutional domain of Ukraine’s identity politics contributed to the difficulty the country has in resisting aggression from the Russian Federation, and the role played by some of Ukraine’s powerful but indecisive actors.

KEYWORDS

National identity, state language, citizenship, post-Soviet states, lustration.

INTRODUCTION

In general, the process of breaking away from the Soviet Union actually took place according to two scenarios. The first can be conventionally called “Baltic”, when the period of occupation by Soviet troops was actually completed, and the restoration of statehood actually took place. In addition to the Baltic countries, Azerbaijan¹ and Armenia should also be included in this category. State inheritance from the pre-occupation period was recognized. Moldova stands apart in this group. Since its own statehood within the existing territory appeared only in Soviet times, the Declaration of Independence of this state emphasized the illegal nature of the Soviet state’s actions of occupying its constituent parts and uniting them into one subject of the Soviet Federation². Moreover, it was quite significant that on the eve of the adoption of the declaration, the Moldovan parliament granted state status to the Romanian language and the use of the Latin alphabet. In many cases, the heredity of the organizational and legal content was also emphasized. In particular, Latvia restored the Constitution of their country, adopted by the Constitutional Assembly on February 15, 1922³.

The second scenario can be called “creating independence”. The other 13 subjects of the Soviet Federation followed this path, including Russia itself. Traditionally, this meant a simple desire to live in a renewed union. Here, once again, it should be emphasized that the full acquisition of independence took place, as a rule, in two stages: first, in the document, which was formally called the declaration (act) of sovereignty, the principles on which a republic wished to see in the new version of the union treaty were determined, and then the act declaring real independence was adopted (or as in the version with Belarus, when the parliament as a second step adopted the law “On granting the status of a constitutional act to the Declaration of State Sovereignty of the Republic of Belarus”⁴).

¹ *The Constitutional Act on the state independence of the Republic of Azerbaijan*, (accessed 22 June 2023) // <https://azerbaijan.az/portal/History/HistDocs/Documents/ru/09.pdf>

² *Declarația de independență a Republicii Moldova*, (accessed 22 June 2023) // <https://old.parlament.md/img/pdf/declaratia.pdf>

³ *Constitution – latvijas republikas saeima*, (accessed 22 June 2023) // <https://www.saeima.lv/en/legislative-process/constitution/>

⁴ G. A. Vasilevich, *Constitutional law of the Republic of Belarus* (Minsk: Knizhnyi Dom, 2010), 157.

Thus, after the collapse of the Soviet Union, “two worlds” were potentially formed: one meant a complete break with the Soviet past with an emphasis on getting rid of the occupying regime; the other, although it meant the creation of an independent statehood, at the same time it did not create artificial obstacles for the potential restoration of allied relations with Russia.

The purpose of this article is to demonstrate how various post-soviet countries pursued these paths, to what extent it contributed to their approaching the European political and legal environment, and accordingly, to the harmonization with the standards in the field of rule of law, human rights, and democracy. A separate case is the situation with the formation of national identity in Ukraine and its fixation at the constitutional level, as well as the possibilities for its further transformation towards approaching the European model, as defined by the Constitution of Ukraine.

While writing the article, the historical method was primarily used to demonstrate the evolution of the formation of national identity in post-soviet countries. Through the dialectical method, it was possible to reveal the reasons for choosing the respective paths of forming national identity in certain states, and the mutual influence of political, ethnic, legal, and international factors on these processes. The application of the comparative legal method helped to identify common and distinctive features in the legal consolidation of corresponding identity elements. The systemic and structural method was useful in establishing the elemental composition of national identity, and the forecasting method was used for developing scenarios for the further transformation of Ukrainian national identity, taking into account the constitutional requirements for its harmonization with European identity.

1. KEY ELEMENTS OF NATIONAL IDENTITY: POST-SOVIET INTERPRETATIONS

Although within these “worlds”, there were different tracks, much depended on the solution of five issues that had a clear legal dimension: geopolitical strategy, purification of power (lustration), official status of languages, the method of regulating the institution of citizenship and, additionally, change in the relations of the new states with the Russian Orthodox Church (more precisely, efforts to create an autocephalous church independent of the Russian Orthodox Church).

A. Geopolitical orientation. Regarding the first question, there was a clear separation of the Baltic countries from the rest of the post-Soviet space. Lithuania, Latvia, and Estonia immediately set a course for joining the EU and NATO. Fundamentally important here was the determination of this course at the constitutional level. For example, on June 8, 1992, the Lithuanian Parliament adopted Constitutional Act No. 1-2622 “On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Alliances”, according to which Lithuania can never and under no circumstances re-join a political, military, economic or other union or commonwealth created on the territory of the former USSR⁵.

According to another track, at the level of the constitution, as a rule, nothing concrete was determined, but certain abstract clauses were established, as for example in the Constitution of Armenia of 1995:

⁵ *Constitutional Act on The Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Alliances on 8 June 1992*, (accessed 22 June 2023) // <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21154?jfwid=1clcwot6i3>

The foreign policy of the Republic of Armenia is carried out in accordance with the norms of international law – with the aim of establishing good-neighbourly and mutually beneficial relations with all states” (Art. 9)⁶.

It can be understood how to really comprehend the content of this provision by analysing the Decision of the Constitutional Court of Armenia, which related to the issue of joining the Eurasian Economic Union (Court Ruling of November 14, 2014⁷), which is quite fundamental for the foreign policy vector of the development of this country. This had a certain resonance, and the Court itself received accusations from the opposition forces of violating the principles of the constitutional order⁸. The court interpreted the aforementioned provision as follows:

The Constitution of the Republic of Armenia, confirming in the Preamble its commitment to the universal values of the Constitution of the Republic of Armenia, in accordance with the foundations of the constitutional order, putting the principles and norms of international law as the basis for the implementation of foreign policy, in the formation of a law-governed, democratic state by granting supremacy of international law, does not provide for any restrictions in the issue of ensuring international and regional cooperation and the legal capacity of the structures that secure it⁹.

B. “Purification” of power. The issue of power purification or lustration was of fundamental importance for the formation of the political elite of the new democracies. For many countries, the solution to this issue was determined by the configuration and political composition of the higher authorities. If for the Baltic countries membership of communist-oriented parties immediately became toxic, then for other post-Soviet states the situation could not change immediately due to the fact that the elite club did not change significantly after the declaration of independence. The situation with the political background of the presidents in the countries of Central Asia is quite illustrative. For example, the first president of Tajikistan was Qahhor Mahkamov, who at the time of his election was the first secretary of the Central Committee of the Communist Party of this republic. The first presidents of Uzbekistan, Islam Karimov, Kazakhstan, Nursultan Nazarbayev, and Turkmenistan, Saparmurat Niyazov, held similar positions in their country before being elected. And the first president of Kyrgyzstan, Askar Akayev, was a member of the Central Committee of the Communist Party of the USSR.

C. The official language. The language issue, which became one of the reasons for justifying the invasion of Ukraine by Russian propaganda, became quite painful for the states formed on the ruins of the former USSR, in which Russification of the population took place most intensively during Soviet times.

At the constitutional level, the status of Russian as the state language was enshrined only in the Constitution of Belarus, which was amended by a 1995 referendum. This allowed the dictator O. Lukashenko, who constantly sought to renew the Soviet Union in one form or another and to lead such a state in general, to “squeeze” the

⁶ *Constitution of Armenia of 1995*, (accessed 22 June 2023) // <http://www.parliament.am/legislation.php?sel=show&ID=2425&lang=eng>

⁷ *Ruling of the Constitutional Court of Armenia*, (accessed 22 June 2023) // https://www.concourt.am/decision/full_text/1175.pdf

⁸ *The constitutional court praises EurAsEC, ignoring unconstitutional provisions, aravot*, (accessed 22 June 2023) // <https://www.aravot-ru.am/2014/11/19/184822/?s=>

⁹ *Ruling of the Constitutional Court of Armenia*, (accessed 22 June 2023) // https://www.concourt.am/decision/full_text/1175.pdf x

Belarusian language out of the public sphere¹⁰. Such a deep “Russification” in Belarusian society is evident even now. It’s seen in event such as after the “stolen” victory of S. Tsikhanouskaya in the 2020 presidential election, when for the first time the Belarusian opposition received proper institutionalization, strong support in the democratic West, and a chance to come to power. After this, all the same Belarusian politicians are afraid to touch the issue of the status of the Russian language and propose to solve it exclusively in a special referendum, leaving it (the question) open in the draft Constitution of democratic Belarus¹¹.

Russian language is lesser in terms of status, but separated from other regional languages, in the Constitution of Kyrgyzstan of 2021: Kyrgyz is recognized as the state language, while Russian is given official status (Art. 13)¹². At the same time, under the previous constitutional system, Russian did not have such a special status, but was simply singled out among the general mentioning of the protection and development of languages (except in Kyrgyz) used by the population of the state (Art. 5 of the 1993 Constitution of Kyrgyzstan). Such an ambiguous legal regulation could not but be reflected in the difficulties in the formation of the official constitutional doctrine. Thus, the Supreme Court of Kyrgyzstan once tried to explain the difference between “state” and “official” languages. But, in my professional opinion, it did not turn out very well. As stated in the Decision of the Constitutional Chamber of the Supreme Court of Kyrgyzstan of November 28, 2013:

The terminological intersection of the concepts of ‘state language’ and ‘official language’ is caused by the fact that both of these languages provide the state’s needs in the field of official communication, record keeping, legislation and judicial proceedings. However, the functions performed by state and official languages and their scope may differ. The legislator, determining the status of official language, establishes that its use in the fields of public life, in the activities of state authorities and local self-government is carried out in those cases when the use of the state language is difficult for significant reasons.¹³

This situation is somewhat similar to the problem of solving the language issue in Ireland, where the system of the first and second official languages is applied. There, from time to time, questions arise about what both the established bilingualism and the priority of the Irish language as the first official language mean¹⁴.

We cannot ignore the attempt to more decisively protect the national identity in this country after the Russian invasion of Ukraine: the Parliament of Kyrgyzstan decided to change the outdated law “On the State Language of the Kyrgyz Republic” of

¹⁰ Y. Brel, “The Failure of the Language Policy in Belarus,” *New Visions for Public Affairs* 9 (2017): 59.

¹¹ *People’s Constitution – Constitution of new Belarus*, (accessed 22 June 2023) // <https://kanstytucyja.online/index.php/new-constitution.html> (I, as well as other experts who helped S. Tsikhanouskaya’s team to develop the draft of the new Constitution, failed to convince my Belarusian colleagues of the need to fix exclusively the status of the Belarusian language as the only state language at the constitutional level. At a certain stage, the “Irish” version of bilingualism was fixed in the project with the status of Russian as the second official language and the status of Belarusian as the first language. However, at the final stage, which is now proposed to the people, as already mentioned, it is proposed that the language question be left “in brackets” and decided in a separate referendum).

¹² *Constitution of Kyrgyzstan of 2021*, (accessed 22 June 2023) // <https://constsof.kg/wp-content/uploads/2022/06/constitution-of-the-kyrgyz-republic.pdf>; This norm is an actual reproduction of a similar provision of the previous Constitution of 2010.

¹³ *Decision of the Constitutional Chamber of the Supreme Court of Kyrgyzstan of November 28, 2013*, (accessed 22 June 2023) // <https://constsof.kg/wp-content/uploads/2013/12/Resh-e-po-Trofimovu-prinyatye.pdf>

¹⁴ G. Whyte, *Constitutional protection for the Irish language in Ireland*, (accessed 22 June 2023) // https://www.academia.edu/5720554/Constitutional_protection_for_the_Irish_language_in_Ireland

2004, which, in particular, provides that the state bodies conduct office management in the state language (i.e., Kyrgyz) – and in some cases, in the official, i.e., Russian¹⁵ language. In practice, almost all document circulation and all activities are carried out in Russian¹⁶.

We can observe a somewhat similar situation in neighbouring Kazakhstan, in accordance with Art. 7 of the Constitution of which, regardless of the fact that only Kazakh is recognized as the state language, it is assumed that Russian is also used in state institutions and local self-government bodies along with Kazakh¹⁷. The position of the constitutional control body of this country is that the specified constitutional norm does not give Russian the status of a second state. At the same time, it is noted that Kazakh as the state language is “a symbol of sovereignty and is an element of the constitutional and legal status of the republic, expressing the unity of the people of Kazakhstan”. In the end, the Constitutional Council of Kazakhstan did not manage to make a clear watershed, establishing only that “the supremacy of the status of the state language means consolidation by the Constitution and the possibility of establishing by laws the exclusivity or priority of its application in the public legal sphere”¹⁸.

After 30 years of independence the result is seen clearly in the outcomes of a sociological survey of residents of the capital of Kazakhstan: Russian is used more often in various spheres of life by 36.2% of respondents, while Kazakh is used by only 22.5%¹⁹.

Another Central Asian country that used to belong to the Soviet bloc, Uzbekistan, has recently changed its constitutional system (publishing a new edition of the constitution in April 2023), while leaving, as before, the exclusive status of the Uzbek language as of a single state while guaranteeing “respect for the languages, customs and traditions of the peoples and nationalities living on its territory, creation of conditions for their development” (Art. 4 of the Constitution of the Republic of Uzbekistan)²⁰.

D. “The territorial integrity” clause. The fourth issue, which also became the subject of political speculation by the Russian Federation in relation to its neighbours, was the issue of territorial integrity. For a long time, the Russian Federation tried in various ways to question the territorial limits of the spread of sovereignty of the post-Soviet countries, appealing to the illegality of certain historical decisions. For example, this was the case in Ukraine as regards the transfer of the Crimean region within the Soviet Union in 1954.

Therefore, it is no accident that, recognizing the devious intentions of their neighbour, who officially declared succession with the Soviet Union, they tried to establish in the newest constitutions as clearly as possible their desire to keep the territory intact within the existing borders – for example, in Georgia:

¹⁵ *Law of the Kyrgyz Republic of April 2, 2004 No. 54 'On the state language of the Kyrgyz Republic',* (accessed 22 June 2023) // <http://cbd.minjust.gov.kg/act/view/ru-ru/1439>

¹⁶ *Kyrgyzstan has taken a step towards reducing the use of the Russian language,* (accessed 22 June 2023) // <https://www.unian.net/world/kirgizstan-zrobiv-krok-do-zmenshennya-vikoristannya-rosiyskoji-movi-12115515.html>

¹⁷ *Constitution of the Republic of Kazakhstan of 1995,* (accessed 22 June 2023) // <https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912/>

¹⁸ *Additional resolution of the Constitutional Council of the Republic of Kazakhstan dated February 23, 2007 N 3,* (accessed 22 June 2023) // https://www.gov.kz/memleket/entities/ksrk/documents/details/adilet/S070000003_?lang=ru

¹⁹ A. P. Konovalov, “Some national language trends in Kazakhstan (sociological research among residents of Astana – the capital of the Republic of Kazakhstan),” *GISAP: Sociological, Political and Military Sciences* 9 (2016): 27.

²⁰ *Draft Constitutional Law of The Republic of Uzbekistan,* (accessed 22 June 2023) // <https://meningkonstitutsiyam.uz/rus.pdf>

Georgia is a democratic, unified and indivisible state, as confirmed by the referendum, carried out on March 31, 1991 held in the entire territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous Region of South Ossetia, and the Act of Restoration of State Independence of Georgia of April 9, 1991... Alienation of the territory of the state of Georgia shall be prohibited (Art.1 of the Constitution of Georgia)²¹.

Similar provisions can be found in the fundamental laws of other states formed on the ruins of the Soviet empire.

E. State-religion relationships: constitutional projection. The history of the constitutional regulation of relations between these states and the church are complicated. At the very beginning, the political establishment did not realize the factor of the Kremlin's possible use of potential of the Russian Orthodox Church for internal social processes in neighbouring states.

For the most part, the European standard of guaranteeing freedom of conscience was fixed in the fundamental laws, with the exception of the countries of the Caucasus region. So, Art. 18 of the Constitution of Armenia establishes the special status of the Armenian Apostolic Holy Church, which performs an exceptional mission as a national church in the spiritual life of the Armenian people, in the development of its national culture and the preservation of its national identity.

According to the constitutional system of Georgia, relations between the State of Georgia and the Georgian Autocephalous Orthodox Church are determined not only by the Fundamental Law, but also by a special constitutional treaty, which must fully comply with the generally recognized principles and norms of international law in the field of human rights and freedoms (Art. 8 of the Constitution of Georgia). Such an agreement was concluded on October 14, 2002. This agreement provides for state recognition of marriages performed by the church and exemption of priests from military duty²².

2. THE STRUGGLE FOR IDENTITY ON THE CONSTITUTIONAL FRONT: THE UKRAINIAN CASE

The history of the formation of national identity in the constitutional law of Ukraine had many features in common with other post-Soviet states and, at the same time, had certain peculiarities.

A. Historical and regulatory background continuity of statehood. The continuity of the Ukrainian state had a sufficiently hybrid character, since purely formally, it can be assumed that the Ukrainian elite did not fully accept the idea of restoring Ukrainian statehood at the time of the adoption of the Declaration of State Sovereignty on July 16, 1990²³. It should be noted that the formalization of the sovereign status of the Ukrainian state at the normative level took place in two stages: first through the adoption of the this declaration, which was a document that expressed the vision of the Ukrainian SSR regarding the content of the new Union Treaty, and, second, directly via

²¹ *Constitution of Georgia of 1995*, (accessed 22 June 2023) // <https://matsne.gov.ge/en/document/view/30346?publication=36>

²² *Constitutional agreement between the Georgian state and the Georgian Apostolic Autocephalous Orthodox Church*, (accessed 22 June 2023) // <http://www.patriarchia.ru/db/text/318741.html>

²³ "Declaration of State Sovereignty of Ukraine on July 16, 1990," *Information of the Verkhovna Rada of Ukraine* No. 31 (1990).

the Act of Declaration of Independence, as a reaction to coup d'état in the capital of the USSR in August 1991²⁴.

The Declaration itself deserves a scientific analysis not only to find out all the historical prerequisites for the establishment of Ukrainian statehood, but also the strange story of how the declaration "survived" and was used as a demonstrative narrative by Russian propaganda and pro-Russian political forces in Ukraine. This is due to the provisions on the non-aligned status of Ukraine in the future: "The Ukrainian SSR solemnly declares its intention to become a permanently neutral state in the future that does not participate in military blocs..."²⁵. Since neither the Act of Declaration of Independence nor the Constitution contained similar provisions or norms that would regulate these issues in a different way, it gave and still gives the critics of the Euro-Atlantic course of Ukraine, as they think, a certain normative basis for the correctness of their position²⁶ (constitutional acts and foreign policy will be discussed later).

As for the "non-aligned status", there is a strange situation on this issue in the expert and political environment. First of all, the contradictory testimony of the authors of the Declaration regarding the true intentions in fixing this status is surprising. Thus, one of them, S. Holovaty, claims that "the Soviet Union was part of the Warsaw Pact and was not a neutral state. And Ukraine said this: we do not want to be in your block! It is clear that at that time we were not talking about the NATO bloc, but about the fact that we do not want to be in the Warsaw Pact bloc, which opposes Western countries"²⁷. Another co-author of the Declaration, I. Zayats, who supports the thesis that "non-alignment" was due to the desire to withdraw from the Warsaw Pact, points to the intention "not to anger" Moscow²⁸. The latter could happen in the case of a declaration to become a member of another bloc, namely, NATO.

At this stage, neither the Declaration of State Sovereignty of 1990 (once again, we emphasize its directive significance as a document that was supposed to precede the re-establishment of the USSR) nor the Act of Declaration of Independence of 1991 say anything about the restoration of independence or the deprivation of the occupational Soviet regime. The maximum that the parliament, which adopted both documents on behalf of the people, was able to do was refer to the fact that one of the goals of adopting the Act was the desire to "continue the thousand-year tradition of state-building in Ukraine"²⁹. The last provision replaced the initial wording that the parliament adopts the Act with the aim of "reviving Ukrainian statehood". This provision caused objections on the part of the deputies, because they believed that the last time Ukrainian statehood took place during the time of the Ukrainian People's Republic (1917–1920), and its leaders, primarily Symon Petliura, due to total Soviet propaganda, were perceived by the population as traitors³⁰. Therefore, at the last stage, the "revival" became a "continuation".

²⁴ "Act of Declaration of Independence of Ukraine on August 24, 1991," *Information of the Verkhovna Rada of Ukraine* No. 38 (1991).

²⁵ "Declaration of State Sovereignty of Ukraine on July 16, 1990," *Information of the Verkhovna Rada of Ukraine* No. 31 (1990).

²⁶ "Deputy Foreign Minister Galuzin – on the conditions of peace in Ukraine and relations with Georgia," *RTVI* (2023).

²⁷ Serhiy Holovaty: *This is the forerunner of the Act of Declaration of Independence and the new Constitution*, (accessed 22 June 2023) // <https://ccu.gov.ua/en/node/19625>

²⁸ *Duty of "parents" of independence*, (accessed 22 June 2023) // <https://umoloda.kyiv.ua/number/1696/196/59919/>

²⁹ "Act of Declaration of Independence of Ukraine on August 24, 1991," *Information of the Verkhovna Rada of Ukraine* No. 38 (1991).

³⁰ *30 years of Independence* (Kyiv: Golos Ukrainy, 2021), 44.

It is interesting that in the next constituent act, the Constitution of Ukraine of 1996, there is no mention at all of “restoration” or “continuation of statehood”, but only of the abstract “century-long history of Ukrainian state-building”, which the parliament relied on when adopting the Constitution³¹.

The idea of “continuation of statehood” was not accepted by the representatives of the western Ukrainian regions. These representatives insisted on the need for official recognition as the occupational Soviet regime, while the residents of the eastern regions had an ambiguous attitude towards the Soviet period. The latter mainly extrapolated the economic troubles in the last years of the Soviet Union to their attitude towards the Soviet system³².

Shifting to the historical and political plane, we note other narratives in the context of the continuity of sovereign statehood. After the establishment of the Soviet regime on the territory of Ukrainian lands, the last government of the Ukrainian People’s Republic, as a sovereign state, moved abroad and began to work as the Government (State Centre) of the Ukrainian People’s Republic in exile³³. The Centre did not stand out for anything special, apart from rallying the diaspora and holding official events. Despite this, in 1992 it issued a document entitled “Deed of Completion of Powers and Termination of Activities of the State Centre of the Ukrainian People’s Republic in Exile”. This document notes that “the People of Ukraine in a democratic and peaceful way by the Act of August 24, 1991, confirmed by a national vote on December 1, 1991, restored the de facto and de jure state independence of Ukraine”³⁴. However, despite the fact that on August 22, 1992, the leaders of the Centre officially handed over all symbols of statehood and power to the leaders of Ukraine, this fact was not reflected in any regulatory act.

B. Official language clause. The language issue has become one of the difficult issues of establishing national identity. The hope that the adoption of the Constitution would finally resolve this issue was not realized: despite the fact that Art. 10 defined the Ukrainian language as the only state language, the Russian language is singled out among other languages of national minorities at the highest constitutional level, which (like other minority languages) is guaranteed free development, use, and protection. The fact that special attention was given to the Russian language is due to the significant communist lobby in the parliament at the time of adoption of the Fundamental Law. In fact, such separation of the Russian language was a kind of compromise on behalf of the right-wing forces.

Of course, the promise given by the President of Ukraine, L. Kuchma, during his inauguration in 1994 must be mentioned:

In the near future, I intend to propose changes to the current legislation with the aim of giving the Russian language official status while preserving its state status as the Ukrainian language³⁵.

Therefore, there was no other option for the statehood-oriented factions. At the same time, the fact that Russian never received the status of the second state or official

³¹ “Constitution of Ukraine,” *Information of the Verkhovna Rada of Ukraine* No. 30 (1996).

³² K. Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation* (Budapest: Central European University Press, 2001), 63.

³³ Y. Neduzhko, “The State Centre of the Ukrainian People’s Republic in Exile: struggle for democracy and independence of Ukraine,” *Ukrainskyi vymir* 4(1) (2005).

³⁴ *30 years ago: how the Ukrainian People’s Republic reunited with Ukraine*, (accessed 22 June 2023) // <https://www.radiosvoboda.org/a/unr-nezalezhna-ukrayina-vozyednannya/31999704.html>

³⁵ L. D. Kuchma, “Oath of loyalty to the people of Ukraine,” *Uriadovi kurier*, (21 July 1994).

language can also be considered a kind of victory in the matter of preserving national identity.

The Constitutional Court of Ukraine could play a significant role in the issue of real assurance of national identity in this aspect, providing an appropriate interpretation to the aforementioned provision of the Fundamental Law, which defines the status of Ukrainian as a single state language. However, frequently appeals to the Court encountered the argument that "the analysis of legal acts regulating language relations in Ukraine indicates the presence of outdated norms, individual gaps and conflicts in the legislation, elimination of which through the official interpretation of the Constitution of Ukraine and the laws of Ukraine not included in the competence of the Constitutional Court of Ukraine" (Judgement of the Constitutional Court of Ukraine of July 10, 1998 No. 36-y/1998)³⁶.

At the same time, it periodically made not entirely appropriate corrections to the also imperfect regulation of the "language issue", asserting that "in state and communal educational institutions, along with the state language, in accordance with the provisions of the Constitution of Ukraine, in particular, part 5 of Art. 53, and the laws of Ukraine, the languages of national minorities can be used and studied in the educational process" (Decision of the Constitutional Court of Ukraine of December 14, 1999 No. 10-пн/99)³⁷.

For a complete understanding of how the "language issue" was resolved in Ukraine, it is worth recalling the real independence in its regulation in the Autonomous Republic of Crimea. According to the 1998 Constitution of the ARC, the Russian language has the right to similar use in all social spheres, including in the educational process, judicial proceedings and in personal documents³⁸. Thus, regardless of the formal consolidation of the Ukrainian language status as a single state language, it finally became it in the legal sense only after the beginning of Russian aggression in 2014.

In advance, we should note that one of the narratives of Russian propaganda on the eve of aggressive actions regarding the occupation of Crimea was one of the first decisions of the parliament, adopted in the midst of revolutionary events: the cancellation of the scandalous law "On the principles of state language policy". This law was adopted during the time of V. Yanukovych, when the Russian language was given the status of the second official language. On February 23, the Verkhovna Rada of Ukraine repealed this act by a corresponding law, but the then Acting President O. Turchynov, understanding all the consequences of such a hasty step, did not sign the law on repeal. The haste consisted, first of all, in the fact that the parliament did not propose an alternative regulation, but the regulatory vacuum that could have appeared in the event of the repeal of this unconstitutional law would be a good basis for possible speculation on this extremely sensitive issue.

The final line in the case of this law was drawn by the Constitutional Court of Ukraine, recognizing the aforementioned law as unconstitutional (Decision of February 28, 2018 No. 2-p/2018). It is indicative in this regard that the decision was based on the recognition of the parliament's violation of the constitutional procedures for consideration and adoption of laws. The Court did not mention the importance of guaranteeing

³⁶ *Judgement of the Constitutional Court of Ukraine of July 10, 1998 No. 36-y/1998*, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/laws/show/v036u710-98#Text>

³⁷ *Decision of the Constitutional Court of Ukraine of December 14, 1999 No. 10-пн/99*, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/laws/show/v010p710-99#Text>

³⁸ "Constitution of the Autonomous Republic of Crimea of 1998," *Information of the Verkhovna Rada of Ukraine* No. 5-6 (1999).

the status of a single state language for Ukrainian in order to protect national identity. An unprecedented number of separate opinions were attached to the decision – in total, 11 judges out of 14 who participated in the consideration of the case issued separate opinions – and only two judges of the body of constitutional jurisdiction emphasized the importance of the constitutional status of the Ukrainian language. It is quite possible that the reason for this was the composition of the Constitutional Court at the time the case was considered, the majority of which consisted of judges who had not previously been determined to have particular courage in solving issues related to sensitive moments of national identity.

Regarding the latter, as an illustration of the truth of this assumption, we can demonstrate the next decision of the Court in the case in which the body of constitutional jurisdiction analysed the new Law “On Ensuring the Functioning of the Ukrainian Language as a State Language” (Decision of July 14, 2021 No. 1-p/2021). Before that, a few words about the act itself, which in a rather strict form established the obligation to use the Ukrainian language in all spheres, including the most sensitive one, the educational process (though with the guarantee of learning the languages of national minorities).

Having inexplicably alarmed neighbours with unhealthy imperial ambitions, European political circles requested an expert opinion from the Venice Commission. The latter, having generally positively assessed such drastic changes in language policy (taking into account the “Russian” factor), nevertheless recommended not to discriminate against other minority languages, except for the languages of the EU member states, and, what is more surprising, emphasized the need to fulfil obligations under the ratified Charter of Regional or Minority Languages³⁹.

Returning to the Court’s decision, it is worth emphasizing its positions on the importance of guaranteeing the status of the Ukrainian language for the protection of national identity:

As a determining factor and the main sign of the identity of the Ukrainian nation, which for many centuries has lived on its original territory and constitutes the absolute majority of the population of Ukraine, the Ukrainian language, thanks to the nation-constitutive principle embedded in it, is a basic systemic component of Ukrainian statehood and its basis. As the language of the autochthonous, most numerous and titular ethnic group, the Ukrainian language has the status of the only state language in Ukraine, which corresponds to world practice⁴⁰.

At the same time, the “language” issue was not finally closed. Of course, we are not talking about the aggressor’s use of propaganda about the need to protect the so-called Russian-speaking population. It is about one of the seven requirements of the European Commission that Ukraine must fulfil, being in the status of a candidate for joining the EU: “finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms”⁴¹.

³⁹ *European Commission for Democracy Through Law (Venice Commission) Opinion on the law on supporting the functioning of the Ukrainian language as the state language*, (accessed 22 June 2023) // [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)032-e)

⁴⁰ *Decision of the Constitutional Court of Ukraine of July 14, 2021 No. 1-p/2021*, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/laws/show/v001p710-21#Text>

⁴¹ *EU Commission’s recommendations for Ukraine’s EU candidate status* (no date) *EEAS*, (accessed 22 June 2023) // https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

C. Using the institution of citizenship to protect identity. Another issue related to the formation and protection of national identity (perhaps even more to national security of the post-Soviet space countries) is guaranteeing the exclusivity of Ukrainian citizenship from the point of view of the impossibility of an unhindered parallel stay in foreign citizenship. For the Ukrainian context, the issue of single citizenship has another additional connotation.

The separatist forces, represented in the authorities of the Autonomous Republic of Crimea in the initial years of Ukrainian independence, in order to emphasize the peninsula's own statehood, took an unconstitutional step and introduced Crimean citizenship (see the so-called "1992 Constitution of the Republic of Crimea"⁴²). Therefore, one of the key tasks of the founding fathers of the current Constitution of Ukraine was to prevent such manifestations of separatist sentiments in the future. For this purpose, the principle of "single citizenship" (Art. 4 of the Constitution) was established among the foundations of the constitutional system. The ambiguous interpretation of this principle, as well as the difficulty in proving a person's acquisition of foreign citizenship, led to the acquisition (uncontrolled by national authorities) of the citizenship of neighbouring states by citizens of Ukraine, primarily Russia and Hungary. The latter, especially Russia, encouraged these processes in every possible way in order to form a separate population, the ephemeral protection of whose rights and interests can be used for the purpose of intervention and other anti-sovereign actions against Ukraine.

Only during the 32nd year of independence, after the full-scale invasion by the Russian Federation, a whole series of scandals with the dual citizenship of high-ranking officials, the question was raised before the Constitutional Court of Ukraine about the official interpretation of the provisions of the aforementioned Art. 4 of the Fundamental Law in terms of whether the principle of single citizenship prohibits multiple citizenship.

One of the important tools in the citizenship policy of the Baltic countries in the context of preserving national identity was the imposition of strict requirements for knowledge of the national language, history, and the foundations of the state Constitution⁴³. Unfortunately, the Ukrainian legislator resorted to a similar step only 28 years after the declaration of independence, establishing in the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State Language" the mandatory passing of a state exam in the Ukrainian language in order to obtain Ukrainian citizenship (previously it was sufficient to confirm language competence by submission of a rather strange document in the form of a certificate from a local authority on understanding the state language)⁴⁴. These changes, as well as the procedure for checking knowledge of the basics of the Constitution of Ukraine and the history of Ukraine, were implemented at the end of 2023.

D. State-religion relationships: constitutional projection. Religious issues were also resolved in the constitutional and legal field in an extremely difficult and inconsistent manner. The Ukrainian Orthodox Church, which received certain autonomy from the Russian Orthodox Church during the period of independence of Ukraine, was dominant among believers in Ukraine from the very beginning. At the legal level, the state mostly tolerated the existence of various churches, not favouring any of them

⁴² *Constitution of the Republic of Crimea*, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/krym/show/rb076a002-92#Text>

⁴³ For example, as it is defined in Art. 12 of the *Law on Latvian Citizenship*, (accessed 22 June 2023) // <https://www.refworld.org/pd/fid/4fbf7e422.pdf>

⁴⁴ "Law on Ensuring the Functioning of the Ukrainian Language as a State Language on April 25, 2019," *Information of the Verkhovna Rada of Ukraine* No. 21 (2019).

(with the exception of political support of the Ukrainian Orthodox Church in certain periods).

The situation changed radically when, with the strong support of President Petro Poroshenko, the local Orthodox Church of Ukraine received a *tomos* (a church document establishing the autocephalous status of the respective church) from the Patriarch of Constantinople in January 2019. In the same period, the state began to actively use the legal tools to expand the space of the autocephalous church and actually oppose the activity of a religious organization dependent on Moscow. For this purpose, at the end of 2018, a special law – No. 2662-VIII – was adopted, by which the Ukrainian Orthodox Church, which had a certain relationship with the Russian Church, had to reproduce in its name the reference to the former “mother” church from Moscow. This would mean that the “Ukrainian Orthodox Church” would have to change its name to the “Russian Orthodox Church in Ukraine” in a voluntary-compulsory manner, with the “compulsory” component meaning the termination of the activities of the church if it does not comply with the requirements of this law⁴⁵. In addition, representatives of the Ukrainian Orthodox Church were deprived of the right to carry out religious activities on the basis of units of the Armed Forces of Ukraine.

As the authors of the draft of this law explained, since, according to sociological surveys, the religious factor has a significant influence on the formation of public opinion, such steps will prevent the threat of “the spread of destructive propaganda using the religious factor on the side of the aggressor state, which will have real consequences for national interests, territorial integrity and national security of Ukraine”⁴⁶. This law was challenged in the Constitutional Court of Ukraine. The body of constitutional justice needed four years to consider the unconstitutionality of the law on its merits. The court made this decision in the conditions of full-scale Russian aggression, and this could not but be reflected in its position, which was additionally emphasized in the argumentation of the decision in this case:

In making this decision, the Constitutional Court of Ukraine takes into account not only probable (hypothetical) risks that could exist at the time of the adoption of Law No. 2662-VIII, as well as real consequences and threats from the activities of religious organizations (associations), the management centre (administration) of which is located outside Ukraine in a state recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied part of its territory, in the conditions of large-scale armed aggression of the Russian Federation against Ukraine, encroachment on its sovereignty, territorial integrity and people’s lives⁴⁷.

⁴⁵ “Law on Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” regarding the name of religious organizations (associations) that are part of the structure of a religious organization (association), the management center of which is located in within the borders of Ukraine in a state recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” on December 20, 2018,” *Information of the Verkhovna Rada* No. 3 (2019).

⁴⁶ *Explanatory note to Draft Law on Amending Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” regarding the name of religious organizations (associations) that are part of the structure of a religious organization (association), the management center of which is located in within the borders of Ukraine in a state recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine*, (accessed 22 June 2023) // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=5309&skl=9

⁴⁷ *Judgement of the Constitutional Court of Ukraine of December 27, 2022 No. 4-p/2022 (in the case regarding the full name of religious organizations)*, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/laws/show/va04p710-22#Text>

The court emphasized that:

the legislator, normalizing the procedure for registration and accounting activities of religious organizations (associations) that are subordinate to religious centres (administrations) that are located outside of Ukraine in a state that is recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied a part of the territory of Ukraine,... had the right to apply restrictions in the form of the obligation of such religious organizations (associations) to clarify their name in this part and reflect the full name in their founding documents" (Decision of the Constitutional Court of Ukraine of December 27, 2022 No. 4- p/2022 (the case regarding the full name of religious organizations)⁴⁸.

At the same time, the experts interviewed before this Court expressed ambiguous opinions regarding the constitutionality of the disputed act. In particular, the well-known expert on freedom of religion D. Vovk argued that "although this law pursues a legitimate goal, the measures chosen by the state do not contribute to the achievement of this goal, are excessive and discriminatory, which violate the aforementioned fundamental rights"⁴⁹.

E. Purification of power: mission impossible? The formation of national identity at the level of the political elite would have benefited from a timely lustration. Instead, this important institution was applied only 25 years after independence. It happened hastily, quite selectively, and with a corresponding degree of doubt about the legitimacy of the tools used.

However, before that, there was a certain history of deception that took place at the very beginning of the establishment of Ukrainian independence. According to one of the bright representatives of the national-patriotic forces represented in the parliament of the 1st convocation, V. Ivasiuk, during the preparation of the declaration of independence of Ukraine in August 1991, an agreement was reached within the walls of the parliament. It suggested that the previously described Act of Declaration of Independence should become the quintessence of parliamentary efforts to establish sovereign statehood. The Act itself must be preceded by the adoption of a number of important laws, including the law on lustration. However, at the last moment, as a result of certain manipulative actions of the communist majority, with the support of the leadership of the Verkhovna Rada, which is oriented towards it, the Act was adopted as an independent document without reference to the laws necessary for the creation of mechanisms for the formation and protection of national identity⁵⁰.

The issue of lustration, which had been put deep in a drawer, returned only after the Revolution of Dignity, when in 2014 the Law "On Purification of Power" was adopted⁵¹. This act was criticized by experts, primarily for two reasons: first, due to the administrative (out-of-court) procedure; and second, due to removal from power and restrictions on the exercise of the rights of citizens exclusively on formal grounds in the form of holding relevant positions during the rule of V. Yanukovych or occupying leadership positions in the USSR Communist Party, or service in the KGB of the USSR.

⁴⁸ Decision of the Constitutional Court of Ukraine of December 27, 2022 No. 4-p/2022, (accessed 22 June 2023) // <https://zakon.rada.gov.ua/laws/show/va04p710-22#Text>

⁴⁹ See: *Case materials No. 1-13/2019 (374/19) to Decision of the CCU No. 4-p/2022*, (accessed 22 June 2023) // <https://ccu.gov.ua/docs/5777>

⁵⁰ V. Ivasiuk, "How the main document was adopted," in *Gaining independence of Ukraine, 1991. History of the proclamation, documents, testimony* (Zhytomyr: Ruta, 2011), 500–501(408–502).

⁵¹ "Law on Purification of Power on September 16, 2014," *Information of the Verkhovna Rada of Ukraine* No. 44 (2014).

A year later, the Supreme Court of Ukraine made a submission to the Constitutional Court of Ukraine regarding the unconstitutionality of the specified law. Eight years later, the case had not been considered on its merits. And this, despite the fact that the European Court of Human Rights also expressed its position regarding the proportionality of the measures applied in this law in the case "Polyakh and Others v. Ukraine" (2020)⁵². Separate statements that we find in the descriptive part of the decision in the case are interesting for understanding the issue:

According to the applicant, the Constitutional Court's handling of the case was unreasonably lengthy and was not motivated by the complexity of the case, as the Government were arguing. For the applicant, the delay could instead be explained by the pressure on the court. He alleged that the Prosecutor General had stated that "the abolition of lustration would be the beginning of the end of this composition of judges". Constitutional Court judges had stated publicly that they were suffering pressure in connection with the case...

It is also relevant, though not in itself decisive, that the time-limits for examination of the cases by the Constitutional Court set forth in domestic law have been considerably exceeded... without a convincing explanation⁵³.

Against this background, national courts long ago abandoned the practice of suspending the consideration of claims of persons dismissed under this law waiting for the final decision of the constitutional justice body, re-instating the plaintiffs in their previous employment and awarding, in individual cases, millions in compensation for the time of forced absence⁵⁴.

All this creates an ambiguous attitude in society towards the implemented measure(s) for the formation of national identity. This is especially important, given that in one year (October 16, 2024) the set period of limitations for the listed persons in exercising their rights, primarily regarding access to public service, will expire. At the same time, the comments of the Venice Commission regarding the proportionality of the measures have been applied⁵⁵, the position of the European Court of Human Rights, numerous decisions of national courts, and all this against the background of the incomprehensible silence of the only body that should have finally answered the question of the legitimacy of the lustration act adopted by the Parliament.

F. West or East? In considering the issue of geopolitical choice in the constitutional realm, it is necessary to start with the Declaration of State Sovereignty of 1990. As strange as it may sound, the academic constitutional doctrine has so far emphasized the importance of the foundations of the constitutional grounds for Ukraine's foreign policy laid down in the Declaration⁵⁶. Similarly, in the official doctrine of the Constitutional Court of Ukraine, there is currently no clearly formed position regarding whether the Declaration of State Sovereignty belongs to the so-called "constitutional block", that is, whether this act affects the content of the constitutional order.

⁵² Case "Polyakh and Others v. Ukraine" (2020), (accessed 22 June 2023) // <https://hudoc.echr.coe.int/fre?i=001-196607>

⁵³ *Ibid.*

⁵⁴ Decision of the District Administrative Court of the city of Kyiv dated February 13, 2020, Kyiv in case No. 826/17787/14, (accessed 22 June 2023) // <https://zakononline.com.ua/court-decisions/show/87590112>

⁵⁵ Interim Opinion of December 16, 2014 No. 788/2014 CDL-AD (2014)044 regarding the Law of Ukraine "On Purification of Power".

⁵⁶ Constitution of Ukraine. Scientific and practical commentary (Kharkiv: Pravo, 2011), 132.

The subsequent process of determining the geopolitical vector at the constitutional level was complex and ambiguous. Despite the constitutional regulation, the first President of Ukraine, L. Kravchuk, decided to transfer the right to resolve the mentioned issue to the parliament. On July 2, 1993, the Verkhovna Rada of Ukraine approved the "Main Directions of Foreign Policy" (Resolution No. 3360-XII). The document, which was absolutely neutral in its content (it could not have been otherwise, given the communist majority in the parliament, which openly dreamed of restoring the USSR), did not contain clear geopolitical guidelines, except perhaps for a mention of the desire to become a member of the Council of Europe and strengthen cooperation within the framework of the Commonwealth of Independent States⁵⁷.

Enshrining the principles of the constitutional system in the Fundamental Law of Ukraine of 1996 should be recognized as an important step: "The foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community, according to generally acknowledged principles and norms of international law" (Art. 18). Unfortunately, as in the previous case, there was no clarity in the geopolitical choice (similarly, it was not proposed to do so at the stage of development and discussion of the Fundamental Law). Thus, this issue remained open and was transferred within certain discretionary limits to the parliament, which received the right to determine the principles of foreign policy (par. 5, part 1, Art. 85 of the Constitution).

For the first time, a certain distinctness at the regulatory level appeared in 2003 with the adoption of the Law of Ukraine "On the Basics of National Security of Ukraine" (June 19, 2003 No. 964-IV). However, it appeared in the "multi-vectorness" of the team of President of Ukraine L. Kuchma:

the main directions of state policy... in the foreign policy sphere are ensuring full participation of Ukraine in all-European and regional collective security systems, acquiring membership in the European Union and the North Atlantic Treaty Organization while maintaining good-neighbourly relations and strategic partnership with the Russian Federation, other countries of the Commonwealth of Independent States, and also with other states of the world. (Art. 8 of the Law).

Coming to power of V. Yanukovich also caused changes in geopolitical orientation. On July 1, 2010, the Law of Ukraine No. 2411-VI "On the Basics of Internal and Foreign Policy" established return of Ukraine to the non-alignment policy, the rejection of the desire to join NATO, but at the same time the vector for joining the EU was preserved.

One of the reasons for the Revolution of Dignity was V. Yanukovich's refusal to sign the Association Agreement with the EU. One of the first acts by P. Poroshenko, the President elected after the Revolution, was initiating changes to the aforementioned law, which, after their approval by the Parliament on December 23, 2014, announced the task of "deepening cooperation with the North Atlantic Treaty Organization in order to achieve the criteria necessary for acquiring membership in this organization"⁵⁸.

On the eve of the next presidential campaign, the same P. Poroshenko came up with another proposal: to enshrine the European and Euro-Atlantic choice of Ukraine

⁵⁷ A. M. Zlenko, *Diplomacy and politics. Ukraine in the process of dynamic geopolitical changes* (Kharkiv: Folio, 2004), 26–31.

⁵⁸ "Law on Amendments to certain Laws of Ukraine regarding Ukraine's Refusal to Implement a Non-alignment Policy on December 23, 2014," *Information of the Verkhovna Rada of Ukraine* No. 4 (2015).

directly in the Constitution. He explained his initiative by the fact that “consolidating the legal certainty of course of Ukraine on EU and NATO membership at the constitutional level will mobilize Ukrainian society and the Ukrainian government and contribute to reforms aimed at achieving the criteria for full membership in the EU and NATO”⁵⁹. The changes contained the obligation at the constitutional level of the parliament, the president, and the government to conduct foreign policy exclusively with a specified goal. Most importantly, changes were made to the preamble of the Constitution: it was assumed that the parliament, adopting the Fundamental Law, thereby confirmed, including “the European identity of the Ukrainian people and the irreversibility of European and Euro-Atlantic course of Ukraine”.

The last moment brought the most questions among experts, because before that the preamble was considered exclusively in the context of determining the historical prerequisites for the adoption of the Constitution and the value foundations laid at the basis of the founding act itself. Moreover, the immediate foundations of the constitutional system, primarily the previously mentioned foundations of foreign policy, are defined in Art. 18, textually placed in Chapter I “General Principles” of the Constitution. This section is one of the three most protected from amending parts of the Constitution and can be changed only as a result of holding an all-Ukrainian referendum. The preamble could potentially be changed in a more simplified manner through the adoption of a decision by the Parliament by a qualified majority.

The answer to the experts’ questions should have been given by the Constitutional Court of Ukraine, whose positive opinion on the draft amendment to the Constitution is a mandatory amendment to the Fundamental Law. However, the body of constitutional justice conducted a formal examination, establishing that the proposed changes do not encroach on human rights, territorial integrity and state independence of Ukraine (Conclusion of the CCU of November 22, 2018 No. 3-B/2018). Unfortunately, we do not find emphasis on the importance of the proposed constitutional changes for the formation of the official constitutional doctrine in the future among the separate opinions of the judges attached to the mentioned conclusion. At the same time, these changes (finally approved by the parliament on February 7, 2019) make us to look in a new way, both at the meaning of the preamble for determining the constitutional order, and at the content of the constitutional and national identity of Ukraine.

CONCLUSIONS

The problem of national identity formation in the countries of the former USSR had its took on a unique character in each case. In Ukraine, this issue was complicated by the political establishment’s ongoing “flirtation” with Russia – a neighbor that openly maintained imperial ambitions. It was further complicated by its reluctance to fully embrace the European path of development. Even the basic step of enshrining a commitment to EU and NATO integration in the Ukrainian constitution, along with establishing minimal mechanisms to protect national identity, provoked a severe response from the Kremlin.

⁵⁹ *Draft Law on Amendments to the Constitution of Ukraine (regarding the strategic course of the state to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization)*, (accessed 22 June 2023) // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64531

This reaction escalated to the point of armed aggression by the Russian Federation, aimed at halting Ukraine's progress toward its chosen direction.

The body of constitutional justice should contribute to the formation of the doctrine of protection of national identity, but the latter treated this role rather formally. But, guided by formal logic, it again sometimes defended its individual elements. We can recall how, trying to copy his northern colleague, President V. Yanukovich decided to introduce certain elements of *Ruscist* ideology, the bearers of which speculate and hyperbolize the victory in the World War II in order to mobilize the masses. It is about the use of the so-called "Banner of Victory" (the standard of the Soviet army unit, which, according to the official version, was the first to capture the Reichstag) at celebrations next to the State Flag of Ukraine. The Constitutional Court of Ukraine recognized such innovations as unconstitutional, again, on formal grounds, since according to the Fundamental Law, the "Banner of Victory" does not belong to state symbols (Court decision dated June 16, 2011 No. 6-pn/2011).

Whenever they had the opportunity, the Baltic countries tried to use the doctrine of national identity protection to confirm the importance of the system of values reflected in the Constitution for the further functioning of national statehood. For example, considering the issue of changing the constitutional status of the head of the national bank, it was emphasized that

such geopolitical orientation of the State of Lithuania is based upon the recognised and protected universal constitutional values which are common with the values of other European and North American states⁶⁰.

Apparently understanding this problem following the Russian invasion, the parliament had to adopt a special law, "On the basic principles of state policy in the sphere of the establishment of Ukrainian national and civil identity" (December 13, 2022 No. 2834-IX), which defines what constitutes a national identity and who should do what to protect it. Regardless, if and when Ukraine's emerges victorious over the Russian invader, much will need to be done in order for national identity to become a real component of official doctrine and constitutional practice. First and foremost, this must be led by the key actor in this area, the Constitutional Court of Ukraine. In recent years the Constitutional Court has started to be much more active in these matters, especially against the background of such issues as language protection and prohibition of totalitarian ideologies.

One such step would be to clearly define the significance of the Declaration of State Sovereignty for the constitutional order⁶¹. The issue is crucial, at least in view

⁶⁰ *Selected official constitutional doctrine: 1993–2016* (Vilnius: Constitutional Court of the Republic of Lithuania, 2017), 994.

⁶¹ At least, it is strange to read the position of the judges of the Constitutional Court, who argue that the declaration should be attributed to constitutional acts (*Serhiy Holovaty: This is the forerunner of the Act of Declaration of Independence and the new Constitution*, (accessed 22 June 2023) // <https://ccu.gov.ua/en/node/19625>). (But the above-mentioned representative of the constitutional justice body, as one of the participants in the development of the current Basic Law, expressed the opposite opinion that the Declaration, as a political, non-normative document, adopted before independence, cannot be the basis of the Constitution (*Constitution of independent Ukraine. Book 3, part 2. Documents. Transcripts* (Kyiv: Pravo., 1998), 220.). Although in some cases, judges of the Constitutional Court of Ukraine turned to the provisions of the Declaration of State Sovereignty to argue their individual positions. And, unfortunately, not always in the appropriate way. Suffice it to recall the separate opinion of Judge O. Tupytskyi, expressed by him during the consideration of the case on amendments to the Constitution in terms of European development of Ukraine. The judge built a whole theory "from the Declaration – through the Act approved at the referendum – to the Constitution", which, in his opinion, did not allow the parliament to make such changes on its own without holding a special referendum on this issue ((accessed 22 June 2023) // https://ccu.gov.ua/sites/default/files/docs/3_v_2018_6.pdf)

of the narratives of Russian propaganda, which claims that Ukraine has abandoned the foundations of the constitutional order that proclaimed Ukraine's "non-aligned" status⁶².

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