

Research Article

JUDICIAL LAW-MAKING AND ITS REGULATION IN INDEPENDENT UKRAINE: ITS HISTORY AND DEVELOPMENT

Taras Didych

tarasdid@knu.ua

<https://orcid.org/0000-0002-2442-8138>

Summary: 1. Introduction. – 2. Methodology. – 3. Prerequisites for the Occurrence of Judicial Law-making in Ukraine (1991-1995). – 4. Constitutional Support for the Judicial System and the Judiciary in Ukraine (1996-1999). – 5. Small Judicial Reforms and Judicial Law-making in Ukraine (2000-2009). – 6. The Crisis of Judicial Legislation in Ukraine (2010-2013). – 7. The Conceptualisation of Legal Support for Judicial Law-making in Ukraine (2014-present). – 8. Conclusion.

To cite this article: *T Didych, 'Judicial Law-making and Its Regulation in Independent Ukraine: Its History and Development'* 2021 3(11) *Access to Justice in Eastern Europe* 82–100. DOI: 10.33327/AJEE-18-4.3-a000071

To link to this article: <https://doi.org/10.33327/AJEE-18-4.3-a000071>

Submitted on 11 May 2021 / Revised 27 Jun 2021 / Approved 26 Jul 2021 Published online: 02 Aug 2021 View data

[Submit your article to Access to Justice in Eastern Europe](#)

CONFLICTS OF INTEREST

The author declares no conflict of interest of relevance to this topic. Although the author serves at same institution as one of the editors of AJEE, which may cause a potential conflict or the perception of bias, the final decisions for the publication of this article was handled by the editors, including choice of peer reviewers, and Editorial Board Members, who are not affiliated to the same institution.

DISCLAIMER

The author declares that he was not involved in any state bodies or any other organisations activities, related to the discussed draft laws and case-law.

ACKNOWLEDGEMENTS

The author would like to express her gratitude to the reviewers and editors of the journal and to the English editor, Sarah White.

JUDICIAL LAW-MAKING AND ITS REGULATION IN INDEPENDENT UKRAINE: ITS HISTORY AND DEVELOPMENT

Didych Taras

Dr.Sc.(Law), Prof., Law School,
Taras Shevchenko National University of Kyiv, Ukraine

tarasdid@knu.ua

<https://orcid.org/0000-0002-2442-8138>

Abstract The article studies the history of the origin and development of legal regulation of judicial law-making in Ukraine. The analysis of doctrinal ideas about judicial law-making, as well as the peculiarities of its formation in Ukraine, allowed us to emphasise that our scientific research is relevant because of: 1) the duration of the domestic judicial system and judicial reform, which dates back to the proclamation of Ukraine's independence (1991) and continues to this day; 2) the ambiguity of the legal support for judicial law-making in Ukraine, the high level of its variability, and the uncertainty of the legal status of the subjects of judicial power in the mechanism of domestic law-making; 3) the doctrinal uncertainty of the place of judicial law-making in the domestic legal system, the ambiguity of its scientific perception, and the understanding of its function in the domestic mechanism of legal regulation.

This paper analyses the provisions of the legislation of Ukraine in terms of legal support for forms and procedures of judicial law-making, the legal significance of judicial law-making acts, and their impact on administering justice in Ukraine. Particular attention is paid to the activities of the judiciary in the areas of law enforcement and law-making, the relationship and interaction of which requires strengthening in the current context of reforming the judicial system and the judiciary in Ukraine.

The stages of development of the legal regulation of judicial law-making in Ukraine are revealed, the peculiarities of the legal support for judicial law-making are determined, and the content of the legal regulation of the mechanism of participation of the subjects of the judicial power of Ukraine in the national law-making is characterised.

Analysis of the history of the legal regulation of judicial law-making in Ukraine and the current state of its legal provision allowed us to conclude that despite the scale of legislative changes in the legal support for the judicial system of Ukraine today, neither the Supreme Court, nor the Constitutional Court of Ukraine, nor any other court institution is recognised by the legislation of Ukraine as subjects of law-making. The legislation of Ukraine does not contain a clear definition of their status as the subject of law-making with the right to accept generally obligatory acts of this process. It is noted that such uncertainty significantly weakens both the legal support for the courts and their activities. At the same time, it is noted that as a result of the adoption of legislative acts within the judicial reform during 2014-2017, which are still in force today, the legislator has made a significant step towards recognising and consolidating the official status of judicial law-making, namely: 1) a number of legislative powers of the Supreme Court and the Constitutional Court of Ukraine were consolidated; 2) the legislative regulation of the stages of the law-making process by the Supreme Court and the Constitutional Court of Ukraine has been strengthened; 3) the legal consolidation of the status of law-making acts of the Supreme Court and the Constitutional Court of Ukraine has been improved.

Keywords *law-making, judicial law-making, court practice, judicial precedent, legal regulation of judicial law-making, Supreme Court, Constitutional Court of Ukraine*

1 INTRODUCTION

One of the important issues of any scientific research is the involvement of historical patterns of the origin, functioning, and development of a particular process, phenomenon, or category. In this article, we show that the involvement of the current state and history of the legal regulation of judicial law-making in Ukraine contributes to significant scientific integration, resulting in certain patterns of origin, formation, development, and improvement. A fair statement in this context is the position of the Ukrainian scholar O.A. Pidopryhora, who notes that the elements of judicial law-making in its modern sense were already introduced into the legal system of ancient Rome, manifested in the activities of the courts. This is because the nature of judicial law-making stems from the idea of justice through the conformity of rights to the demands of life. And it is this idea that should govern the courts, so they should not only deal with practical situations but also create law, ensuring justice in society.¹ Over time, judicial law-making is legitimised and becomes legally cemented, thus reflecting the affiliation of the legal system to the Romano-Germanic (European) type of legal system, which affects European civilizational legal values and standards. Thus, the need to present issues of the legal regulation of the administration of justice in general, as well as in the context of judicial law-making in Ukraine, is due to the very nature and functional purpose of the judiciary, especially in terms of the fact that today, the functional load on it is expanding and deepening. This process is connected to the introduction of rights to carry out certain forms of law-making, and such official activities require the provision of appropriate legal support.

The relevance of the scientific study of the problems concerning the legal support for judicial law-making in Ukraine is significantly increased by the role of judicial practice in the modern conditions of the judicial system and the legal system as a whole, as well as the emergence of so-called 'quasi-judicial precedent', which is not identified in the legislation of Ukraine but is still formed as a result of the activities of the Supreme Court and the Constitutional Court of Ukraine. Thus, the relevance of scientific research on the history of formation and current state of the legal support for judicial law-making in Ukraine is due to the following:

1. To begin, there is the duration of the reform of the domestic judicial system and the judiciary, which dates back to the proclamation of Ukraine's independence (1991) and continues to this day. An important condition for reform is not only institutional and organisational changes in the functioning of the judiciary but also doctrinal and conceptual changes in its nature and content. First of all, judicial law-making becomes an integral part of judicial functioning, along with traditional legal interpretation and law enforcement activities. Therefore, the incomplete reform of the court system of Ukraine and the judicial system is caused by the ambiguity of the doctrinal-conceptual understanding and perception of the integral law-making role of courts and the need for its legal recognition and consolidation as part of modern judicial activity.
2. Next, there is the ambiguity of the legal support for judicial law-making in Ukraine, the high level of its variability and inconsistency in consolidating the participation of judicial authorities in the mechanism of domestic law-

¹ OA Pidopryhora, EA Kharytonov, *Roman law: Textbook* (Yurinkom Inter 2003) 231-232.

making, the status of their law-making acts, and the peculiarities of their adoption, change, and abolition. Today, in the conditions of official non-recognition of judicial law-making, the law-making status of court legal positions, that is, judicial precedent as an element of forms (sources) of Ukrainian law, it should be noted that certain rules of law give the Supreme Court the power to adopt provisions that are, to a certain extent, binding and give the Constitutional Court of Ukraine the power to declare unconstitutional a certain range of normative legal acts or their parts, to adopt obligatory legal conclusions, etc. Such an ambiguous situation in the field of legal support for the participation of judicial entities in Ukraine requires a critical analysis of the history of the origin and development of legal support for judicial law-making in Ukraine and a clarification of the current state of legal consolidation of judicial law-making.

3. Lastly, there is the doctrinal uncertainty of the place of judicial law-making in the domestic legal system, the ambiguity of its scientific perception, and the uncertainty of its functional purpose in the domestic mechanism of legal regulation. The long-standing influence of Soviet legal doctrine and official ideology in terms of the non-recognition of judicial law-making and its perception as a harmful institution inherent exclusively in the legal systems of Europe and the United States has led to the fact that legal science still has a negative attitude towards it and does not recognise it as an independent type (form) of modern law-making in Ukraine. This is reflected in the ambiguity of its legal support in Ukraine, the lack of political, legislative will to consolidate judicial law-making, the lack of adequate legal support, and the inclusion of judicial law-making in the sources (forms) of the law of Ukraine.

2 METHODOLOGY

Scientific research into any problems of state and legal reality requires the determination of the methodological potential of the topic. That is, it is necessary to establish the features of the methodology of scientific knowledge, which should ensure the comprehensiveness, objectivity, and effectiveness of research. Given this, a scientific study of the history of the formation and current state of legal support for judicial law-making in Ukraine requires identifying the features and functionality of the principles of scientific knowledge, methodological approaches, research methods, and predicting the scientific consequences that can be achieved by applying appropriate methodological approaches and methods of scientific knowledge.

Methodologically, the scientific study of the history of formation and state of legal support for judicial law-making in Ukraine requires the use of a wide range of components of the methodological foundations of jurisprudence. Given the specifics of the subject of this study, the approach is based on a system of principles of scientific knowledge, methodologies, and methods of scientific research, which, in an organic combination, can ensure the comprehensiveness, objectivity, and effectiveness of research. First of all, we should note the system of principles of scientific knowledge (historicism, objectivity, systematicity, etc.), which determine the system of ideas and provisions that form the basis of any scientific research. The principle of historicism, which is the basis of the idea of studying the legal support for judicial law-making through the prism of the history of its formation and current state, is central. These aspects determine the patterns of general cognitive topics, in this case, judicial law-making. Accordingly, the results of studying the history of the formation and current state of legal support for judicial law-making

will not only clarify the dynamics of such support but also form a methodological basis for further study of judicial law-making as a theoretical, legal, sectoral, and special legal format. In addition to the principles of scientific knowledge that form the basis of any scientific activity, an important place in the methodology of this work is occupied by methodological approaches. The functional approach, which is universal in nature, is used in various sciences, the main idea of which is to study the functional purpose, place, and role among the phenomena of the legal reality of any phenomenon subject to research. In the context of our work, the functional approach plays a key role, as it generally allows us to reveal the problems of origin and formation of legal support for judicial law-making through the prism of the functional purpose that was entrusted to it in the relevant historical periods of judicial reform. However, while determining the overall cognitive strategy of this work, the functional methodological approach to understanding the legal support for judicial law-making in Ukraine characterises problems in the general context, which requires the specification of its application through the use of different research methods. Research methods ensure the objectivity, efficiency, reliability, specificity, and unity of scientific research and predictable scientific results.

Legal support for judicial law-making in Ukraine as a historical and legal issue requires the use of a system of philosophical and general scientific methods that provide the study of these problems in terms of the general concept of knowledge and a special, scientifically determined phenomenon. An important role belongs to the historical and legal method of scientific knowledge, the technical and legal characteristics of which will allow us to characterise retrospectively the legislative consolidation of the powers of judicial law-making in Ukraine, its implementation, requirements for subjects, and the procedure for carrying out judicial law-making, as well as the status and place of acts of judicial law-making in the system of forms (sources) of the law of Ukraine.

3 PREREQUISITES FOR THE OCCURRENCE OF JUDICIAL LAW-MAKING IN UKRAINE (1991-1995)

The subject of this scientific work determines the time limits for clarifying the features of legal regulation of judicial law-making in Ukraine, which, in our opinion, should be limited to the early 90s of the twentieth century (1991-the year of Ukraine's declaration of independence) and the current stage of court system reform, which is accompanied, *inter alia*, by the introduction of certain elements of judicial law-making. In particular, such time limits are determined primarily by the laws of origin and formation of the domestic judicial system because, at the turn of the millennium, the Soviet Union collapsed and Ukraine gained its independence, something that was impossible without its own national legal system, judicial system, and law-making. It was this moment that marked the time in which the independent state of Ukraine opened a new page in the history of its formation and development. With the proclamation of independence, Ukraine set a course to recognise the principle of the rule of law and state-building, the content and direction of which are aimed at ensuring human rights and freedoms as the highest social value. The very proclamation of Ukraine's independence marked the beginning of the construction of the judicial system as the basis for the administration of justice, based on universal and general legal principles in compliance with the law. The adoption of the Act of Independence of Ukraine² and the

2 Resolution of the Verkhovna Rada of the Ukrainian SSR 'On the Proclamation of Independence of Ukraine' of 24 August 1991 <<http://zakon2.rada.gov.ua/laws/show/1427-12>> accessed 26 June 2021.

Declaration of State Sovereignty of Ukraine³ became the legal basis for the establishment of its own judicial system. In particular, the provisions of the Declaration of State Sovereignty of Ukraine enshrined the principle of the division of state power in the Republic into legislative, executive, and judicial. Thus, there was a need to develop a new judicial system in Ukraine and to adopt the necessary regulations, which formed the basis for its further legal support. It should be noted that since Ukraine had been part of the Soviet Union, Ukrainian legal doctrine acquired certain ideological ideas about the recognition or denial of the usefulness of certain legal categories, phenomena, and processes. These included judicial law-making and judicial precedent, which were considered ideologically and legally harmful to the Soviet judicial system and inherent exclusively in bourgeois legal systems. In this regard, we must agree with K.G. Kravchuk that the scientific ideas about judicial law-making developed in Soviet jurisprudence are marked by their ideological 'colour'. Law-making, in general, is considered through the prism of its supporting role in the system of legal practice.⁴ Although the proclamation of Ukraine's independence required rethinking and forming new approaches in the context of state-building and law-making, it was extremely difficult to move away from dogmatic Soviet ideology, as can be seen in the legal literature today. This was reflected in a certain inconsistency in the legal provision of judicial law-making in Ukraine and the lack of unambiguous political will for its legal recognition and granting it official legal status.

Given Ukraine's long membership in the Soviet Union, it is logical that with the acquisition of independence, a significant part of the regulations of the all-Union and republican levels were 'inherited' by Ukraine. At the same time, this led to and, in a way, accelerated the development and adoption of new legislation relating to the consolidation of the legal basis for the formation of the judiciary in independent Ukraine. In 1991, the domestic legal system faced one of its main tasks – the formation of an independent and autonomous judiciary, which, above all, required a determination of the basic principles of its operation, structure, instance structure, and procedural basis and the place of the judiciary in the system of lawmakers. In terms of legal support for the functioning of the judiciary in Ukraine, the first amendments were made to the Constitution of the Ukrainian SSR, which was supplemented by new provisions regarding the establishment of the Constitutional Court.⁵

It should be noted that these legislative acts have essentially become the legal basis for the legal consolidation and implementation in the legal system of Ukraine of the first forms of judicial law-making. Thus, in accordance with the provisions of the then Constitution of the USSR and to reform the judiciary and the legislation of Ukraine on the judiciary, the Law of the USSR 'On Arbitration Court' of 4 June 1991 was adopted, which introduced a system of arbitration in Ukraine. It should be noted that the content of Art. 12 enshrined one of the functions of arbitral tribunals, which was one of the forms of classical judicial law-making, namely: the study and generalisation of the practice of judicial application of legislation, the analysis of statistics of commercial disputes, and explanations to arbitral tribunals on the application of legislation of the Ukrainian SSR, which regulates relations in the economic sphere.⁶

Active work on the formation of domestic legislation in the field of justice continued and was marked by the adoption of the Concept of Judicial Reform, which was approved

3 Declaration of State Sovereignty of Ukraine of 16 July 1990 <<http://zakon2.rada.gov.ua/laws/show/55-12>> accessed 26 June 2021.

4 KG Kravchuk, 'Theoretical, legal and practical aspects of the relationship between lawmaking of the Supreme Court and the Constitutional Court of Ukraine' (Candidate of Law thesis, Taras Shevchenko National University of Kyiv 2019) 41-42.

5 Закон УРСР «Про зміни і доповнення Конституції (Основного Закону) Української РСР від 24.10.1990 <<https://zakon.rada.gov.ua/laws/show/404-12#Text>> accessed 26 June 2021.

6 Law of the Ukrainian SSR 'On the Arbitration Court' of 4 June 1991 <<http://zakon2.rada.gov.ua/laws/show/1142-12/ed19910604>> accessed 26 June 2021.

by the Resolution of the Verkhovna Rada of Ukraine on 28 April 1992.⁷ According to O.Z. Khotynska-Mor, this Concept of Judicial Reform in Ukraine actually initiated the reform of the judicial system in Ukraine; it was the first well-thought-out, conceptual document tracing a systematic approach to reforming the judicial system of the state and the use of scientific methodology.⁸

The Concept formed the basic principles of judicial and legal reform, which provided for the separation of powers of the judiciary, guaranteed the independence and autonomy of the judiciary from the influence of the legislature and the executive, enshrined the right of citizens to consider their case in competent, independent, and impartial court, creating a judicial system that would guarantee the right to judicial protection and equality of citizens before the law and create conditions for real competition and the realisation of the presumption of innocence. In addition, new principles of the legal status of judges were determined, and the peculiarities of the formation of judicial bodies were envisaged. An important step was the introduction of administrative proceedings through the creation of administrative courts. As we can see, the reform provided for a number of important measures and principles that ensured the independence and autonomy of the judiciary and furthered the creation of a system of legislation on the judiciary, which would allow it to achieve the relevant objectives. At the same time, it can be argued that it is the Concept that provided for the establishment of the Constitutional Court and general and arbitral tribunals with clearly defined jurisdiction, which included powers in the field of law-making.

However, it was not possible to achieve all the goals set by the Concept, which, in our opinion, was due to various objective and subjective factors, including ones of socio-economic, legal, and political natures. The predominant point of view among researchers on the main shortcomings of this Concept is that it lacked deadlines for the implementation of its tasks. Despite this, this Concept still became the basis for ensuring the formation and further development of the judicial system of Ukraine, as well as initiated the formation of legal regulation of the judicial system.

In accordance with the tasks set by the Concept, a system of normative legal acts was adopted over the next two years, which established the legal basis for the organisation and functioning of the judicial system of Ukraine. Thus, the Laws of Ukraine 'On the Constitutional Court of Ukraine' of 3 June 1992 and 'On the Status of Judges' of 15 December 1992 were adopted. It was the Law of Ukraine 'On the Constitutional Court of Ukraine' that determined the procedure for its formation and main functions. Chapter 3 of this Law defines the powers of the Constitutional Court of Ukraine, including consideration of cases of inconsistency with the Constitution and laws of Ukraine of Decrees and Orders of the President of Ukraine, Resolutions of the Presidium of the Verkhovna Rada of Ukraine, laws and other acts adopted by the Verkhovna Rada and the Presidium of the Autonomous Republic of Crimea, and as resolutions and orders of the Cabinet of Ministers of Ukraine and the Council of Ministers of the Autonomous Republic of Crimea,⁹ which is evidence the Constitutional Court of Ukraine having an independent role in the law-making mechanism of Ukraine in terms of constitutional control, with the possibility of declaring these acts unconstitutional.

7 The concept of judicial and legal reform, approved by the Resolution of the Verkhovna Rada of Ukraine on 28 April 1992 <<https://zakon.rada.gov.ua/laws/show/2296-12#Text>> accessed 26 June 2021.

8 OZ Khotynska-Nor, 'The significance of the Concept of Judicial and Legal Reform in Ukraine of 1992 in the reform of the judicial system. A look through time' (2015) 12 *Bulletin of the Academy of Advocacy of Ukraine* 8.

9 Law of Ukraine 'On the Constitutional Court of Ukraine' of 3 June 1992 <<http://zakon3.rada.gov.ua/laws/show/en/2400-12>> accessed 26 June 2021.

However, the functions and powers provided by law could not be fully implemented, as it was not possible to immediately form the composition of the Constitutional Court of Ukraine, as it was limited to the appointment of the Chairman of the Constitutional Court of Ukraine. In our opinion, this normative legal act nevertheless formed the principles of constitutional jurisdiction and determined the legislative competence of the Constitutional Court of Ukraine, giving it the right to consider invalid cases of normative acts adopted in violation of the Constitution of Ukraine, as well as cases on the inconsistency of the Constitution with international acts of any law or other normative acts that violate constitutional human rights and freedoms.

It should be noted that in the early 90s of the twentieth century, the Soviet-era Law of the Ukrainian SSR 'On Judiciary Ukraine' of 5 June 1981 was still in force.¹⁰ In 1994, it was amended,¹¹ which provided for the renaming of people's courts to (district) city courts. Additionally, their jurisdiction began to include cases of administrative offences.

The provision enshrined in Art. 40 of the relevant law was important for clarifying the law-making activity of courts of general jurisdiction. In particular, it was envisaged that the Supreme Court of Ukraine would study and summarise judicial practice, analyse judicial statistics, and provide guidance to courts on the application of national legislation arising in court cases. Guidance explanations of the Plenum of the Supreme Court of Ukraine are binding on courts, other bodies, and officials that apply the law under which the clarification is given. The provisions of this law also provided that the system of courts of general jurisdiction consisted of local courts, courts of appeal, higher specialised courts, and the Supreme Court of Ukraine.

Thus, the relevant legislative changes of 1994 implemented the principle of division of jurisdictions into general and constitutional, as well as made the normative determination of the status of the binding nature of explanations of the Plenum of the Supreme Court of Ukraine. Such changes in the status of the bindingness of explanations of the Plenum of the Supreme Court of Ukraine, on the one hand, became a continuation of the legislative role, which was determined by the Supreme Court of the Soviet Union. On the other hand, such changes showed a gradual legislative recognition of certain legislative powers of The Supreme Court of Ukraine.

In addition, the provisions of the Law of Ukraine 'On the Status of Judges' of 15 December 1992 stipulate that judges are officials of state power who are constitutionally empowered to administer justice and perform their duties on a professional basis.¹² However, despite the fact that the relevant law would logically provide for the powers of judges, it only stipulates that judges have the necessary powers to administer justice under the laws of Ukraine. Since Ukraine's independence, the decisions of the Plenum of the Supreme Court of Ukraine have not lost their significance and, in fact, have begun to play a more important role in the administration of justice due to a large number of gaps in legislation and wording that ambiguously interprets their content.¹³

10 Law of the Ukrainian SSR 'On the Judiciary of Ukraine' of 5 June 1981 (remained in force until 2002) <<https://zakon.rada.gov.ua/laws/show/2022-10#Text>> accessed 26 June 2021.

11 Закон України Про внесення змін і доповнень до Закону Української РСР «Про судоустрій Української РСР» від 24.02.1994 <<https://zakon.rada.gov.ua/laws/show/4017-12#Text>> accessed 26 June 2021.

12 Law of Ukraine 'On the Status of Judges' of 15 December 1992 <<http://zakon3.rada.gov.ua/laws/show/2862-12/ed19940202>> accessed 26 June 2021.

13 VI Yamkovy, 'Introduction of judicial precedent as a necessary element of harmonization of Ukrainian legislation with European legal systems' (2009) 2 *Comparative Legal Research* 27.

4 CONSTITUTIONAL SUPPORT FOR THE JUDICIAL SYSTEM AND THE JUDICIARY IN UKRAINE (1996-1999)

The next important step in the formation of the judicial system of Ukraine and the introduction of the institution of judicial law-making was the adoption of the Constitution of Ukraine (1996), in connection with which the Resolution of the Verkhovna Rada of Ukraine 'On the Concept of Judicial Reform' (1994) expired. In fact, the provisions of the Constitution of Ukraine became the foundation for the creation and development of legislation on the organisation and functioning of the judicial system.

It is impossible to underestimate the importance of the adoption of the Constitution of Ukraine as a whole, as well as the formation of the judiciary, because, as noted by R.O. Kuybida, the Constitution of Ukraine has become the most radical document in the field of judicial reform.¹⁴ Particular attention is paid to the normative definition of important and fundamental principles of the judicial system of Ukraine, in particular, in Section VIII 'Justice' and Section XII 'Constitutional Court of Ukraine'. Thus, it was declared that: 1) the jurisdiction of the courts extends to all legal relations in the state; 2) the powers of the courts are defined solely by the administration of justice; 3) the legal status of judges, the principle of territoriality, and specialisation of justice are determined. In addition, two forms of organisation of the court system were distinguished: courts of general and constitutional jurisdiction. The first was represented by general and special courts, and the other by the Constitutional Court of Ukraine as the only body of constitutional jurisdiction in Ukraine.¹⁵ Virtually, the Constitutional Court of Ukraine, as a body of constitutional control, was entrusted with the authority to establish the constitutionality of laws and other normative legal acts and compliance of existing international treaties with the Constitution, as well as the official interpretation of the Constitution and laws of Ukraine. In our opinion, the separate list of powers emphasises and indicates the law-making nature of the powers of the Constitutional Court of Ukraine.

Thus, in the course of its activity, the Constitutional Court analyses the legislation and identifies gaps and other negative phenomena in the legal system, and improves legislation. Moreover, considering the legal positions of the Constitutional Court is an imperative requirement for the subjects of law-making activity.¹⁶ T.V. Rosik's point of view is important in the context of our vision of the law-making nature of the functions of the Constitutional Court of Ukraine. According to her, it is the obligatory status of decisions of the Constitutional Court of Ukraine that is taken as the basis for substantiating the law-making significance of judicial practice, thus substantiating the law-making nature of the powers of the Constitutional Court.¹⁷

In accordance with the enshrined constitutional provisions, work has been actively carried out since 1996 to adopt special laws in the field of justice. Important among them is the Law of Ukraine 'On the Constitutional Court of Ukraine' of 16 October 1996. The basic principles of the Constitutional Court of Ukraine, provided by the relevant law as amended in 1992, were reflected in the law adopted in 1996, but a significant novelty of the relevant law was the amendment of the powers of the Constitutional Court of Ukraine. The provisions of

14 RO Kuybida, *Reforming justice in Ukraine: Status and prospects* (Attica 2004) 20.

15 Constitution of Ukraine of 28 June 1996 <<http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page3>> accessed 26 June 2021.

16 KY Kudrina, 'Legal factors influencing lawmaking in the Russian Federation' (Candidate of Law thesis abstract, Voronezh 2006).

17 TV Rosik, 'The role of judicial practice in modern lawmaking: Theoretical and applied aspects' (Candidate of law thesis, MP Dragomanova National pedagogical University 2016) 128.

the new law limited the power to consider cases on the conformity of acts of the President and the Cabinet of Ministers of Ukraine only to the Constitution of Ukraine and not to the Constitution and laws as provided by the 1992 law. Without resorting to debatable issues concerning the participation of the Constitutional Court of Ukraine in law-making and recognition/non-recognition of its decisions as sources of law, we should note that we can speak about its special law-making activities based on the legal status of the relevant body, which has a special nature and scope of powers at the legislative level of authority. The legislative powers were, to some extent, limited by the law adopted in 1996, which provided for the reduction of the category of cases that require the adoption of conclusions on the compliance/non-compliance to the Constitution of Ukraine and laws. This is confirmed in the study of V.O. Serdiuk, noting that the competence of the Constitutional Court of Ukraine and the legal nature of its decisions directly suggest that the decisions of the Constitutional Court of Ukraine not only clarify the current legislation on constitutionality but also change and supplement the law. During its existence, the Constitutional Court of Ukraine has established many precedents that are actively used.¹⁸ An important role in the legal regulation of the law-making activity of the Constitutional Court of Ukraine also belonged to the Rules of Procedure of the Constitutional Court, which was approved by the decision of the Constitutional Court of Ukraine of 5 March 1997. This document defined the procedural principles of the Constitutional Court of Ukraine, in particular, the procedure for electing the Chairman of the Constitutional Court of Ukraine, his powers and deputies, and the procedure for holding sittings of Chambers of Judges and their powers, as well as procedural aspects of plenary sittings of the Constitutional Court of Ukraine, the procedure for preparing materials on constitutional submissions and appeals for consideration at plenary sessions, and the procedure for consideration of cases.¹⁹

5 THE SMALL JUDICIAL REFORM AND JUDICIAL LAW-MAKING IN UKRAINE (2000-2009)

The next important step in the legal regulation of the organisation and activities of the judiciary was the adoption in the early 2000s of a number of laws amending existing regulations, in particular, in science and practice, called the ‘small judicial reform’.

One of the important grounds for the introduction of the ‘small judicial reform’, according to O. Khotynska-Nor, was the expiration of the Transitional Provisions of the Constitution of Ukraine, which postponed the implementation of constitutional norms that provided a completely new model of the judiciary for five years; the date of 28 June 2001 was critical.²⁰ Thus, within five years after the adoption of the Constitution of Ukraine, a new judicial system was envisaged in accordance with the provisions of the Constitution of Ukraine. Yet, as reality shows, this was not achieved, as no legal act was adopted during this period. Therefore, the main purpose of the small judicial reform was to bring the judicial system in line with the provisions of the Basic Law of the state. On 21 June 2001, the Verkhovna Rada of Ukraine adopted ten laws in the framework of the implementation of the so-called ‘small judicial reform’: ‘On Amendments to the Law of Ukraine “On the Judiciary of Ukraine”’; ‘On Amendments to the Law of Ukraine “On Arbitration Court”’; ‘On Amendments to

18 VO Serdiuk, ‘The role of judicial law-making in the process of judicial reform in Ukraine’ (2014) 27 (4) *Scientific notes of VI Vernadsky Taurida National University. Series ‘Legal Sciences’* 29.

19 Rules of Procedure of the Constitutional Court of Ukraine of 5 March 1997 <<http://zakon2.rada.gov.ua/laws/show/v001z710-97/ed19970305>> accessed 27 July 2021.

20 OZ Khotynska-Nor, ‘The impact of “small judicial reform” on the development of the judicial system of Ukraine: organizational aspects’ (2016) 1 (42) *Court Appeal* 7.

the Law of Ukraine ‘On the Status of Judges’; ‘On Amendments to the Law of Ukraine “On Judicial Self-Government Bodies”’; ‘On Amendments to the Law of Ukraine “On Qualification Commissions, Qualification Attestation and Disciplinary Responsibility of Judges of Courts of Ukraine”’; ‘On Amendments to the Criminal Procedure Code of Ukraine’; ‘On Amendments to the Civil Procedure Code of Ukraine’; ‘On Amendments to the Arbitration Procedure Code of Ukraine’; ‘On Amendments to the Laws of Ukraine “On the Police”, “On Pre-trial Detention”, “On Administrative Supervision of Persons Released from Places of Imprisonment”’; “On Amendments to the Law of Ukraine ‘On the Prosecutor’s Office’”.

The restructuring of the judicial system on the basis of the adopted package of laws was called the ‘small judicial reform’ because, according to R.O. Kuybida, it was based on the principle of implementation of the Constitution through small changes in the legislation and judiciary. However, these changes were minimal (even ‘episodic and inconsistent’) because they could not fully implement the constitutional norms and were only part of the stage of judicial reform preventing the paralysis of the judiciary system of 2001.²¹

According to the changes, a single system of judges of general jurisdiction was formed, which included a system of arbitration courts, which were renamed into commercial courts. Thus, a system of specialised commercial courts was formed, consisting of appellate commercial courts and the Supreme Commercial Court of Ukraine. Procedures for appealing court decisions in appellate and cassation forms, court authorisation of arrest, detention in custody and interim custody of persons suspected of committing a crime, inspection and search of a person’s home, etc., were planned to be introduced. In our opinion, these measures did not bring radical changes in the implementation of the proper mechanism of judicial law-making, as they did not fully ensure the completeness of legislative regulation of the judicial system. However, these changes strengthened the establishment of the basic principles of justice in society and the further adjustment of the mechanism of the judiciary, creating favourable conditions for the adoption of the Law of Ukraine ‘On the Judiciary of Ukraine’. Therefore, the implementation of the ‘small judicial reform’ was not the final stage of reforming the judicial system in Ukraine and introducing judicial law-making.

A further and more urgent task was to develop a single piece of legislation that would unify the basic principles of the judiciary and ensure the full legal regulation of justice in the state and, as a result, resolve the issue of granting official status to law-making courts. As a result, on 7 February 2002, the Verkhovna Rada of Ukraine adopted the Law of Ukraine ‘On the Judiciary of Ukraine’. One of the defining provisions of the new law was the introduction of the principle of consideration of cases by courts in the form of civil, commercial, administrative, and constitutional proceedings and the introduction of appellate courts. However, despite the significant list of introduced novelties, the abolition of Art. 40 of the Law of Ukraine ‘On the Judiciary of Ukraine’, which provided for the binding nature of the decisions of the Plenum of the Supreme Court of Ukraine, provides an explanation of the law became important for law-making activities by courts of general jurisdiction.²² The motivation for this decision was the idea of strengthening the implementation of the principle of independence of judges, which provided for the submission of their law rather than a guiding explanation enshrined in the decisions of the Plenum of the Supreme Court of Ukraine. In this regard, scholars have expressed the opinion that the Law of Ukraine ‘On the Judiciary of Ukraine’, the adoption of which was a decisive step towards judicial reform, allowed a number of issues related to

21 R Kuybida, ‘Analysis of the current stage of judicial reform and prospects for its development’ (*Jurisprudence*) <<http://www.lawyer.org.ua/?w=r&i=5&d=244>> accessed 27 June 2021.

22 Law of Ukraine ‘On the Judiciary of Ukraine’ of 7 February 2002 No 3018-III <<https://zakon.rada.gov.ua/laws/show/3018-14#Text>> accessed 27 June 2021.

the courts and the organisation of the judiciary to be addressed.²³ Conversely, O.I. Yushchuk claims that the Law of Ukraine 'On the Judiciary' became a product of a compromise, which had to be found in the conditions of time lag when the five-year term of judicial reform, defined in the 'Transitional Provisions' of the 1996 Constitution, was coming to an end.²⁴

Despite the existing views of legal scholars on the role and importance of the adoption of this law, it should be noted that its appearance did not affect the intensification or inhibition of judicial law-making. In this regard, we should agree with the opinion of A.A. Selivanov that the provisions of the Law of Ukraine 'On the Judiciary of Ukraine' continued the position of 'neutrality' on the binding nature of the decisions of the Plenum of the Supreme Court of Ukraine, which clarifies current legislation. They are no longer mandatory or 'guiding'.²⁵

6 THE CRISIS OF JUDICIAL LEGISLATION IN UKRAINE (2010-2013)

The next step in the process of reforming the judicial system was the adoption of the Law of Ukraine 'On the Judiciary and the Status of Judges' of 7 July 2010, which aimed to bring the judicial system of Ukraine in line with international standards.²⁶ It is expedient to pay attention to those innovations that further influenced the formation of judicial law-making. In particular, the formation of a four-tier judicial system was completed by this legislative act. In accordance with this, the Supreme Specialized Court of Ukraine for Civil and Criminal Cases was established, and the Supreme Commercial Court of Ukraine and the Supreme Administrative Court of Ukraine continued to operate as a cassation instance. Their powers included the study and generalisation of judicial practice, providing methodological assistance to lower courts in uniformly applying the provisions of the Constitution and laws of Ukraine in judicial practice on the basis of its generalisation and analysis of judicial statistics. At the same time, the power to clarify the application of the law remained 'recommendatory', as defined by the previous law.

However, the powers of the Supreme Court of Ukraine underwent significant changes. Thus, according to the adopted law, the power to give explanations to courts of general jurisdiction on the uniform application of the law was transferred to higher specialised courts, including the Supreme Administrative Court of Ukraine. As such, the Supreme Administrative Court of Ukraine carries out similar activities on the interpretation of legislation, which is *de facto* inherent in the Constitutional Court of Ukraine. When interpreting legislation by adopting rulings, the Supreme Administrative Court of Ukraine ensures the uniform application of laws.

It is worth noting that the 4-tier judicial system is not typical of the EU, which, to some extent, did not agree with the official vector of the integration of Ukraine and its legal system into the EU. However, it was difficult to exclude the Supreme Court of Ukraine from the judiciary at that time, as the Supreme Court was a subject that was provided for in the Constitution of Ukraine, and the possibility to amend the Constitution of Ukraine was quite difficult from a political point of view, given the lack of appropriate support from parliamentarians. Thus,

23 IS Zubachova, 'Historical and legal issues of the formation of the judiciary in Ukraine' (2015) 5 (20) Part 3 Molodyi Vchenyi 45-47 <<http://molodyvchenyi.in.ua/files/journal/2015/5/91.pdf>> accessed 27 June 2021.

24 OI Yushik, 'Judicial reform would not be hampered by more common sense' <<http://www.viche.info/journal/2098/>> accessed 27 June 2021.

25 AA Selivanov, 'The right to interpret laws and legal consequences of the application of official interpretation' (2006) 7 Bulletin of the Supreme Court of Ukraine 2.

26 Law of Ukraine 'On the Judiciary and the Status of Judges' of 7 July 2010 No 2453-VI <<https://zakon.rada.gov.ua/laws/show/2453-17#Text>> accessed 27 June 2021.

the legislator took a different path, narrowing the powers of the Supreme Court of Ukraine and leaving it the right to provide clarifications of a recommendatory nature. This indicates that the law-making activity of the Supreme Court of Ukraine was not a priority.

However, Art. 46 of the Law of Ukraine 'On the Judiciary and the Status of Judges' provides that the Plenum of the Supreme Court of Ukraine gives opinions on draft legislation relating to the judiciary, proceedings, the status of judges, enforcement of judgments, and other issues related to the judicial system of Ukraine, as well as ensures the uniform application of the law by courts of different specialisations in the manner and order prescribed by procedural law. However, the Rules of Procedure of the Plenum of the Supreme Court provided for the exercise of powers to make decisions on appeals to the Constitutional Court of Ukraine on the constitutionality of laws other legal acts, as well as on the official interpretation of the Constitution of Ukraine and laws, providing explanations to courts of general jurisdiction on issues of application of legislation and declaring invalid explanations of higher specialised courts.²⁷

The next attempts to reform the judiciary, both in our opinion and those of other scholars, not only did not lead to the expected result but instead formed a significant level of public distrust of the judiciary and especially the results of their activities. According to V.M. Sushchenko, during 2010-2014, the judiciary, thanks to its spontaneous and chaotic reform, reached the extreme limit of distrust by society regarding both the persons of judges and the court decisions they make. Given that in 2013-2014, all the branches of state power, including the institution of the president, suffered a severe political, organisational, and legal crisis, at the request of society, a new wave of reform, including the judiciary, began.²⁸ The change of political forces and a certain reorganisation of state power led to a reform of the judicial system and the mechanism of justice in Ukraine.

7 THE CONCEPTUALISATION OF LEGAL SUPPORT FOR JUDICIAL LAW-MAKING IN UKRAINE (2014-present)

The call for a new wave of reform is declared by the Presidential Decrees 'On the Sustainable Development Strategy of Ukraine 2020' of 12 May 2015 and 'On the Strategy for Reforming the Judicial System, Judiciary and Related Legal Institutions for 2015-2020' of 20 May 2015.²⁹

In our opinion, their adoption was largely due to the political crisis in the country and attempts to reform the judiciary by 'cleansing' them of courts that in the past did not 'appropriately' show their professional qualities as judges during the Revolution of Dignity. Such legislative acts were the Laws of Ukraine 'On Restoration of Confidence in the Judiciary in Ukraine' of 8 April 2014 No 1188-VII, 'On Purification of Power' of 16 September 2014 No 1682-VII, and 'On Ensuring the Right to a Fair court' of 12 February 2015 No 192-VIII.³⁰

27 Rules of Procedure of the Plenum of the Supreme Court of Ukraine of 10 June 2002 No 7 <<http://zakon3.rada.gov.ua/laws/show/v0007700-02>> accessed 30 June 2021.

28 VM Sushchenko, 'Reforming the judiciary: Integrated approach' (2015) 168 <http://ekmair.ukma.edu.ua/bitstream/handle/123456789/7782/Sushchenko_Reformuvannia_sudovoi.pdf> accessed 27 June 2021.

29 Decree of the President of Ukraine 'On Sustainable Development Strategy Ukraine 2020' of 12 May 2015 <<http://zakon5.rada.gov.ua/laws/show/5/2015>> accessed 27 June 2021; Decree of the President of Ukraine 'On the Strategy for Reforming the Judiciary, Judiciary and Related Legal Institutions for 2015-2020' of 20 May 2015 <<http://zakon3.rada.gov.ua/laws/show/276/2015>> accessed 27 June 2021.

30 Law of Ukraine 'On Restoration of Confidence in the Judiciary in Ukraine' of 8 April 2014 No 1188-VII; Law of Ukraine 'On Purification of Power' of 16 September 2014 No 1682-VII; Law of Ukraine 'On Ensuring the Right to a Fair Trial' of 12 February 2015 No 192-VIII.

The next reform of the judiciary was carried out to realise the right of every person and citizen to a fair and independent trial.

The next step in the process of reforming the judiciary, which characterises the current state of legal support for judicial law-making, was the adoption of legislation that made significant changes to the Constitution of Ukraine and the Law of Ukraine 'On the Judiciary and the Status of Judges'. Thus, the Verkhovna Rada of Ukraine adopted the Law of Ukraine 'On Amendments to the Constitution of Ukraine (regarding justice)' of 2 June 2016 No 1401-VIII.³¹ Analysing the novelties of judicial reform, Y.S. Shemshuchenko points out that they were aimed at depoliticising and ensuring the independence of the judiciary, creating an honest, transparent, accessible, and fair court for all citizens. These laws open real constitutional and legal opportunities for fundamental judicial reform in Ukraine, based on our own experience and European standards of justice.³² However, according to another scholar, S.G. Shtogun, the corresponding reform is questionable because

...even if we consider abstractly that the main task of the reform has already been achieved, which is to eradicate corruption in the judiciary and recruit new judges who will serve justice perfectly, we still have a lot of problems in the judiciary and, paradoxically, new laws have created new problems...³³

In this context, it is necessary to dwell on the changes that have been made to the Constitution of Ukraine. The basic principles of judicial proceedings have changed, as the provision that judicial proceedings are carried out by the Constitutional Court of Ukraine and courts of general jurisdiction has been removed. Instead, the current Art. 124 of the Constitution of Ukraine stipulates that justice in Ukraine is administered exclusively by courts. This content of the article has several points: 1) it does not indicate the legal status of the Constitutional Court of Ukraine because the relevant provision can be interpreted such that the Constitutional Court of Ukraine is a separate link in the judicial system of Ukraine; 2) it may be possible to talk about strengthening its role in the performance of judicial control because, by its legal nature, it is not a judicial body, and therefore, in performing the function of control, we can assume the strengthening of its law-making activities.

In addition, the Constitutional Court of Ukraine was limited in its interpretive function, as it now retains the right to interpret only the provisions of the Constitution of Ukraine. The question of the status of acts of the Supreme Court of Ukraine remains unclear, as, in light of the changes, the latter was renamed as the Supreme Court, consolidating its status as the highest in the judicial system of Ukraine. It is logical that the question arises again in determining the place of the Constitutional Court of Ukraine and other judicial bodies in the judicial system of Ukraine. Thus, it can be argued that at present, there is no division of courts of Ukraine into general and constitutional jurisdiction, although the provisions of the Law of Ukraine 'On the Constitutional Court of Ukraine' state that it is a body of constitutional jurisdiction that ensures the supremacy of the Constitution of Ukraine, compliance with the Constitution, the laws of Ukraine, and other acts in cases provided by the Constitution, and carries out the official interpretation of the Constitution, as well

31 Law of Ukraine 'On Amendments to the Constitution of Ukraine (Regarding Justice)' of 2 June 2016 No 1401-VIII <<http://zakon3.rada.gov.ua/laws/show/1401-19>> accessed 27 June 2021; Law of Ukraine 'On the Judiciary and the Status of Judges' of 02 June 2016 No 1402-VIII <<http://zakon2.rada.gov.ua/laws/show/1402-19>> accessed 27 June 2021.

32 YS Shemshuchenko, 'Judiciary in Ukraine: Modern doctrine, mechanisms and prospects for implementation. Transcript of the scientific report at the meeting of the Presidium of the NAS of Ukraine on 21 December 2016' (2017) 2 *Visnyk NAS of Ukraine* 37-40.

33 SH Shtogun, 'Judicial reform or cosmetic repair of the judiciary' (2016) 2 (14) *Journal of the National University 'Ostroh Academy'*. Law series 1 <<http://lj.oa.edu.ua/articles/2016/n2/16sshsv.pdf>> accessed 27 June 2021.

as other powers in accordance with the Constitution.³⁴ In this context, attention should be paid to the novelties introduced by the Law of Ukraine 'On the Judiciary and the Status of Judges' of 2 June 2016. One of the main innovations has been the return to a three-tier judiciary, as the judiciary now consists of local courts, appellate courts, and the Supreme Court. At the same time, certain provisions of both the Law and the Constitution of Ukraine provide for the possibility of establishing High Specialized Courts, which should administer justice as courts of first instance to consider certain categories of disputes (Art. 32 of the Law of Ukraine 'On Judiciary and Status of Judges'). In addition, according to the law, today, the Supreme Court is the highest court in the judicial system of Ukraine, which ensures the stability and unity of judicial practice in the manner and order prescribed by procedural law. Among the powers of the Supreme Court (Part 2 of Art. 36 of the Law of Ukraine) are those of a legislative nature, namely: analysing judicial statistics; generalising judicial practice; providing opinions on draft legislation related to the judicial system, the judiciary, the status of judges, the execution of court decisions, and other issues related to the functioning of the judiciary; appealing to the Constitutional Court of Ukraine regarding the constitutionality of laws and other legal acts, as well as regarding the official interpretation of the Constitution of Ukraine; ensuring the uniform application of the law by courts of different specialisations in the manner and order prescribed by procedural law.³⁵ The new collegial body in the structure of the Supreme Court is the Grand Chamber of the Supreme Court, which is also competent to exercise its powers as a court of appeal in cases considered by the Supreme Court as a court of first instance on the analysis of judicial statistics, the study of judicial practice, and the generalisation of judicial practice.

An important role in the mechanism of the law-making activity of the Supreme Court is assigned to the Plenum of the Supreme Court to ensure the equal application of legal norms in resolving certain categories of cases, the generalisation of the practice of substantive and procedural laws, and the systematisation and promulgation of legal positions of the Supreme Court with references to court decisions in which they were formulated. Since 2017, the Plenum of the Supreme Court has been given additional powers similar to those under the Soviet Union – clarifications of a recommendatory nature on the application of the law in resolving court cases based on the analysis of judicial statistics and the generalisation of judicial practice.³⁶

8 CONCLUSIONS

Despite the scale of legislative changes in the issue of legal support for the judicial system of Ukraine, neither the Supreme Court, nor the Constitutional Court of Ukraine, nor any other judicial institution are recognised by Ukrainian law as subjects of law-making. Ukrainian legislation does not clearly enshrine their status as the subject of law-making with the right to adopt mandatory acts of law-making. This uncertainty significantly weakens the legal support for both the courts and their activities. At the same time, it should be noted that because of the adoption of these legislative acts during 2014-2017, which are still in force today, the legislator has made a significant step forward in recognising and consolidating the official status of judicial law-making. In this context, we are speaking about the following.

34 Law of Ukraine 'On the Constitutional Court of Ukraine' of 13 July 2017 No 2136-VIII <<https://zakon.rada.gov.ua/laws/show/2136-19>> accessed 27 June 2021.

35 Law of Ukraine 'On the Judiciary and the Status of Judges' of 02 June 2016 No 1402-VIII <<https://zakon.rada.gov.ua/laws/show/1402-19/card2#Card>> accessed 27 June 2021.

36 Law of Ukraine 'On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts' of 3 October 2017 <<https://zakon.rada.gov.ua/laws/show/2147%D0%B0-19#n771>> accessed 30 June 2021.

First, the legislative powers of the Supreme Court and the Constitutional Court of Ukraine were established, and the courts implement them by regulating:

- a) binding conclusions on the application of the rules of law set out in the decisions of the Supreme Court, which, on the one hand, are mandatory for all subjects of power that apply in their activities a legal act containing the relevant rule of law (Part 5 of Art. 13 of the Law of Ukraine 'On the Judiciary and the Status of Judges'), and on the other hand, are taken into account by other courts application of such norms of law (Part 6 of Art. 13 of the Law of Ukraine 'On the Judiciary and the Status of Judges') (Part 6 of Art. 368 of the CrPC of Ukraine, Part 4 of Art. 236 of ComPC of Ukraine, Part 4 of Art. 263 of the CPC of Ukraine, Part 5 Art. 242 of the CAP of Ukraine);
- b) the status of the decision of the Constitutional Court of Ukraine as binding on the territory of Ukraine, final, and such that it cannot be appealed (Arts. 151-2 of the Constitution of Ukraine);
- c) opportunities for the Constitutional Court of Ukraine to develop, specify, and change its own legal position in its subsequent acts (Part 2 of Art. 92 of the Law of Ukraine 'On the Constitutional Court of Ukraine');
- d) features of proceedings in cases of appeal against regulations of executive authorities, the Verkhovna Rada of the Autonomous Republic of Crimea, local governments, and other subjects of power (Art. 264 of the CAP of Ukraine), which leads to their loss of force;
- e) the powers of the Constitutional Court of Ukraine to decide on compliance of the Constitution of Ukraine (constitutionality) of legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea (item 1, Part 1 of Art. 7 of the Law of Ukraine 'On the Constitutional Court of Ukraine');
- f) appeal against acts, actions or omissions of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice, the High Qualifications Commission of Judges of Ukraine, and the Qualification and Disciplinary Commission of Prosecutors (Arts. 266-267 CAP of Ukraine) regarding nature of acts, actions, or omissions;
- g) the mandatory status of the legal opinions of the Supreme Court set out in the decision on the results of the exemplary case, which must be taken into account by the court in deciding in an exemplary case that meets the criteria set out in the decision of the Supreme Court on the results of the trial case (Part 3 Art. 291 of the CAP of Ukraine).

Secondly, the legislative regulation of certain stages of the law-making process by the Supreme Court and the Constitutional Court of Ukraine was strengthened, namely: 1) the procedure for transferring cases to the Supreme Court; 2) the procedure for making decisions by the Supreme Court based on the results of the consideration of exemplary cases; 3) grounds and procedure for transfer of proceedings when the case contains an exclusive legal problem and such transfer is necessary to ensure the development of law and the formation of a single law enforcement practice; 4) the procedure for conducting constitutional proceedings, defining the issues of constitutional petition, constitutional appeal, and constitutional complaint, which are forms of appeal to the Constitutional Court of Ukraine, regulates the procedure for adopting constitutional appeals to the Constitutional Court of Ukraine, the process of opening constitutional proceedings, forms of constitutional proceedings, features, procedure meetings, and plenary sessions of the Grand Chamber and the Senate, and the terms of constitutional proceedings are

determined; 5) the procedural order for adoption of acts of the Court (Section II of the Law of Ukraine 'On the Constitutional Court of Ukraine').

Thirdly, the legal consolidation of the status of law-making acts of the Supreme Court and the Constitutional Court of Ukraine was improved. Thus, it is regulated that acts of law-making of the Supreme Court are both mandatory and subject to consideration by courts, while acts of law-making of the Constitutional Court of Ukraine are mandatory, final, and cannot be appealed. The possibility of deviating from the Supreme Court's conclusions on the application of the law by referring the case to a chamber, joint chamber, or the Grand Chamber of the Supreme Court, while deviating from the legal positions of the Constitutional Court of Ukraine, is possible if the Senate refuses to consider the case by the judgement of the Grand Chamber. The possibility of appealing certain acts of law-making of the Supreme Court on appeal has been established, while law-making acts of the Constitutional Court of Ukraine are not subject to appeal.

REFERENCES

1. Pidopryhora OA, Kharytonov EA, *Roman law: Textbook* (Yurinkom Inter 2003) 231-232.
2. Resolution of the Verkhovna Rada of the Ukrainian SSR 'On the Proclamation of Independence of Ukraine' of 24 August 1991 <<http://zakon2.rada.gov.ua/laws/show/1427-12>> accessed 26 June 2021.
3. Declaration of State Sovereignty of Ukraine of 16 July 1990 <<http://zakon2.rada.gov.ua/laws/show/55-12>> accessed 26 June 2021.
4. Kravchuk KG, 'Theoretical, legal and practical aspects of the relationship between lawmaking of the Supreme Court and the Constitutional Court of Ukraine' (Candidate of Law thesis, Taras Shevchenko National University of Kyiv 2019) 41-42.
5. Law of the Ukrainian SSR 'On the Arbitration Court' of 4 June 1991 <<http://zakon2.rada.gov.ua/laws/show/1142-12/ed19910604>> accessed 26 June 2021.
6. The concept of judicial and legal reform, approved by the Resolution of the Verkhovna Rada of Ukraine on 28 April 1992 <<https://zakon.rada.gov.ua/laws/show/2296-12#Text>> accessed 26 June 2021.
7. Khotynska-Nor OZ, 'The significance of the Concept of Judicial and Legal Reform in Ukraine of 1992 in the reform of the judicial system. A look through time' (2015) 12 Bulletin of the Academy of Advocacy of Ukraine 8.
8. Law of Ukraine 'On the Constitutional Court of Ukraine' of 3 June 1992 <<http://zakon3.rada.gov.ua/laws/show/en/2400-12>> accessed 26 June 2021.
9. Law of the Ukrainian SSR 'On the Judiciary of Ukraine' of 5 June 1981 (remained in force until 2002) <<https://zakon.rada.gov.ua/laws/show/2022-10#Text>> accessed 26 June 2021.
10. Law of Ukraine 'On the Status of Judges' of 15 December 1992 <<http://zakon3.rada.gov.ua/laws/show/2862-12/ed19940202>> accessed 26 June 2021.
11. Yamkovy VI, 'Introduction of judicial precedent as a necessary element of harmonization of Ukrainian legislation with European legal systems' (2009) 2 Comparative Legal Research 27.
12. Kuybida RO, *Reforming justice in Ukraine: Status and prospects* (Attica 2004) 20.
13. Constitution of Ukraine of 28 June 1996 <<http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page3>> accessed 26 June 2021.

14. Kudrina KY, 'Legal factors influencing lawmaking in the Russian Federation' (Candidate of Law thesis abstract, Voronezh 2006).
15. Rosik TV, 'The role of judicial practice in modern lawmaking: Theoretical and applied aspects' (Candidate of law thesis, MP Dragomanova National pedagogical University 2016) 128.
16. Serdiuk VO, 'The role of judicial lawmaking in the process of judicial reform in Ukraine' (2014) 27 (4) *Scientific notes of VI Vernadsky Taurida National University. Series 'Legal Sciences'* 29.
17. Rules of Procedure of the Constitutional Court of Ukraine of 5 March 1997 <<http://zakon2.rada.gov.ua/laws/show/v001z710-97/ed19970305>> accessed 27 July 2021.
18. Khotynska-Nor OZ, 'The impact of "small judicial reform" on the development of the judicial system of Ukraine: organizational aspects' (2016) 1 (42) *Court Appeal* 7.
19. Kuybida R, 'Analysis of the current stage of judicial reform and prospects for its development' (*Jurisprudence*) <<http://www.lawyer.org.ua/?w=r&i=5&d=244>> accessed 27 June 2021.
20. Law of Ukraine 'On the Judiciary of Ukraine' of 7 February 2002 No 3018-III <<https://zakon.rada.gov.ua/laws/show/3018-14#Text>> accessed 27 June 2021.
21. Zubachova IS, 'Historical and legal issues of the formation of the judiciary in Ukraine' (2015) 5 (20) Part 3 *Molodyi Vchenyi* 45-47 <<http://molodyvcheni.in.ua/files/journal/2015/5/91.pdf>> accessed 27 June 2021.
22. Yushik OI, 'Judicial reform would not be hampered by more common sense' <<http://www.viche.info/journal/2098/>> accessed 27 June 2021.
23. Selivanov AA, 'The right to interpret laws and legal consequences of the application of official interpretation' (2006) 7 *Bulletin of the Supreme Court of Ukraine* 2.
24. Law of Ukraine 'On the Judiciary and the Status of Judges' of 7 July 2010 No 2453-VI <<https://zakon.rada.gov.ua/laws/show/2453-17#Text>> accessed 27 June 2021.
25. Rules of Procedure of the Plenum of the Supreme Court of Ukraine of 10 June 2002 <<http://zakon3.rada.gov.ua/laws/show/v0007700-02>> accessed 27 July 2021.
26. Sushchenko VM, 'Reforming the judiciary: integrated approach' (2015) 168 <http://ekmair.ukma.edu.ua/bitstream/handle/123456789/7782/Sushchenko_Reformuvannia_sudovoi.pdf> accessed 27 June 2021.
27. Decree of the President of Ukraine 'On Sustainable Development Strategy Ukraine 2020' of 12 May 2015 <<http://zakon5.rada.gov.ua/laws/show/5/2015>> accessed 27 June 2021.
28. Decree of the President of Ukraine 'On the Strategy for Reforming the Judiciary, Judiciary and Related Legal Institutions for 2015-2020' of 20 May 2015 <<http://zakon3.rada.gov.ua/laws/show/276/2015>> accessed 27 June 2021.
29. Law of Ukraine 'On Restoration of Confidence in the Judiciary in Ukraine' of 8 April 2014 No 1188-VII.
30. Law of Ukraine 'On Purification of Power' of 16 September 2014 No 1682-VII.
31. Law of Ukraine 'On Ensuring the Right to a Fair Trial' of 12 February 2015 No 192-VIII.
32. Law of Ukraine 'On Amendments to the Constitution of Ukraine (Regarding Justice)' of 2 June 2016 No 1401-VIII <<http://zakon3.rada.gov.ua/laws/show/1401-19>> accessed 27 June 2021.
33. Law of Ukraine 'On the Judiciary and the Status of Judges' of 02 June 2016 No 1402-VIII <<http://zakon2.rada.gov.ua/laws/show/1402-19>> accessed 27 June 2021.

34. Shemshuchenko YS, 'Judiciary in Ukraine: Modern doctrine, mechanisms and prospects for implementation. Transcript of the scientific report at the meeting of the Presidium of the NAS of Ukraine on 21 December 2016' (2017) 2 *Visnyk NAS of Ukraine* 37–40.
35. Shtogun SH, 'Judicial reform or cosmetic repair of the judiciary' (2016) 2 (14) *Journal of the National University 'Ostroh Academy'. Law series 1* <<http://lj.oa.edu.ua/articles/2016/n2/16sshsv.pdf>> accessed 27 June 2021.
36. Law of Ukraine 'On the Constitutional Court of Ukraine' of 13 July 2017 No 2136-VIII <<https://zakon.rada.gov.ua/laws/show/2136-19>> accessed 27 June 2021.
37. Law of Ukraine 'On the Judiciary and the Status of Judges' of 02 June 2016 No 1402-VIII <<https://zakon.rada.gov.ua/laws/show/1402-19/card2#Card>> accessed 27 June 2021.