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Prospects of Transformation of the Institution of Constitutional Justice in the Course of Armed Conflicts

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Abstract

The objective of the article was to consider the current state and prospects of the transformation of the institution of constitutional justice in the course of armed conflicts. Observational and comparative methods were the main methodological tools. The research showed that constitutional courts must apply a specific method of judicial constitutional control during armed conflicts. Most of the complaints and appeals of the population to the constitutional courts seek clarifications on the constitutionality of the rules on social guarantees of the military, the rights of refugees. Constitutional interpretation of legislative provisions of the Republic of Azerbaijan, consideration of complaints of constitutional courts of Germany and Ukraine are examples of countries' reactions to armed conflicts. The conclusions confirm the need to transform the institution of constitutional justice, which becomes the main defender of the constitutional system and its principles during armed conflicts. In this vein, it is urged to increase the rate of scientific capital in the judiciary to improve the process of reform of the Constitutional Court in these difficult conditions experienced by Ukraine.

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Keywords: constitutional demand; Venice Commission; martial law; social protection; military provocations.

Perspectivas de Transformación de la Institución de Justicia Constitucional en el Curso de los Conflictos Armados

Resumen

El objetivo del artículo fue considerar el estado actual y las perspectivas de la transformación de la institución de justicia constitucional en el curso de los conflictos armados. Los métodos de observación y comparación fueron las principales herramientas metodológicas. La investigación mostró que los tribunales constitucionales deben aplicar un método específico de control constitucional judicial durante los conflictos armados. La mayoría de las denuncias y recursos de la población ante los tribunales constitucionales buscan aclaraciones sobre la constitucionalidad de las normas sobre garantías sociales de los militares, los derechos de los refugiados. La interpretación constitucional de las disposiciones legislativas de la República de Azerbaiyán, la consideración de las quejas de los tribunales constitucionales de Alemania y Ucrania son ejemplos de las reacciones de los países a los conflictos armados. En las conclusiones se confirma la necesidad de transformar la institución de la justicia constitucional, que se convierte en la principal defensora del sistema constitucional y sus principios durante los conflictos armados. En este orden de ideas, se insta a aumentar la tasa de capital científico en el poder judicial para mejorar el proceso de reforma de la Corte Constitucional en estas difíciles condiciones que vive Ucrania.

Palabras clave: demanda constitucional; comisión de Venecia; ley marcial; protección social; provocaciones militares.

Introduction

After World War II, the demand for constitutional courts as a tool for protecting the rights and interests of society in individual states increased along with the revival of constitutional principles. The denial of integrity and national sovereignty by fascism prompted political forces to constitutionally implement mechanisms that would guarantee that the past would not repeat (Gutmann and Voigt, 2021).

The entire structure of constitutional law has arisen over the last decades mainly from the interaction of politics and judiciary. A third tier has been gradually added to this constitutional structure in recent years. It entrusted such institutions as agencies and commissions with technical and specialized tasks. They obtained advisory and control functions in constitutionally sensitive areas, such as the regulation of democratic standards, basic rights protection and the guarantee of legality (Repetto, 2022).

The mechanism of constitutional protection began to involve strongly interconnected and interacting elements that formed the system. The latter began to serve the interests of protecting the Basic Law and was aimed at preventing and eliminating relevant violations. The institution of constitutional protection became the key to the mechanism of constitutional protection (Petriv, 2020). Being judicial in nature, it became a neutral apolitical adviser who made decisions in accordance with the basic principles enshrined in the Constitution. Constitutional justice took the position of a traditional element of institutional design (Rabinovych, 2021).

The content of constitutional protection began to comprise both legal and political activities. This institution took a position independent from other bodies of the political machinery, and began to perform its own functions and tasks for the effective functioning of this mechanism.

The constitution of most states contains both strict and formal procedural norms, as well as principles that enshrine certain rights of citizens. Unlike norms, these principles cannot be applied literally, but must be interpreted. They have the same hierarchical rank, are tangent to each other, and have the same legal sphere (Konca, 2021).

In this sense, the term “constitutional court” means a body that makes decisions in a defined area. It is separate from the judiciary and has the final and exclusive right to interpret the Constitution, as well as the constitutional validity of laws and state actions (Kłopočka-Jasińska, 2022). Constitutional courts are often considered to be the ultimate guarantee of the protection of democratic governance and the culture of human rights that underlies liberal political communities (Castillo-Ortiz, 2020).

In the current conditions, the constitutional courts of many countries have adopted a system of constitutional complaints in various models, along with appeals and submissions. This system is the main part of the Constitutional Court, one of its important jurisdictions (Chakim, 2019). Any person who believes that his or her rights have been violated by the any action or failure to act of public authorities may file a complaint.

According to international law, armed conflicts are defined as organized violence between states and/or non-state parties. It causes human deaths and is a serious global problem being consistently wide-spread (Jolof *et al.*,

2022). People living in areas of armed conflict suffer from a wide range of violent acts and human rights violations.

These include forced displacement, gunfights, shelling, and torture. In addition to the severe impact, it has at the individual level, political violence also has far-reaching consequences for communities and the functioning of government. This includes the destruction and control of public spaces, as well as the impairment of social systems such as health services. Periods of armed conflicts can affect all vectors of social life in the state, in particular the exercise of the rights of individuals and legal entities, as well as non-residents (Abdiyeva, 2020).

The martial law introduced by the government temporarily limits the human and citizen's constitutional rights and freedoms. The security of the state during martial law takes precedence over some constitutional rights and freedoms of citizens (Hirsch Ballin *et al.*, 2020). However, access to justice in this context should remain an integral element of a modern democratic state that relies on the rule of law (Prytyka *et al.*, 2022).

Constitutional courts during armed conflicts act as mediators that determine proper boundaries of regulatory acts adopted in wartime in democratic states. Relevant legal initiatives in wartime should be limited in the exercise of the powers by the rule of law and respect for human rights (Averyanova, 2019).

In view of the foregoing, the aim of the article was to consider the transformation of the institution of constitutional justice in the course of armed conflicts. The aim involved the fulfilment of the following research objectives:

1. summarize the main current approaches and components of constitutional protection using the example of the European centralized model of constitutional review;
2. identify the prospects for the transformation of the institution of constitutional justice in the course of armed conflicts on the example of a number of countries using a centralized model of constitutional review.

1. Literature review

The choice of the research topic correlates with the modern vectors of the theorists' research in different states. The work of Prytyka *et al.* (2022) was the main tool and background for the study. The research was focused on analysing the consequences of armed aggression against the state, the introduction of an appropriate legal regime in such areas as the exercise

of property rights, the administration of justice, the execution of court decisions and labour relations.

The work emphasized that the martial law regime involves the restriction of certain constitutional rights and freedoms of individuals and the introduction of new judicial mechanisms. The work of Petriv (2020) also had an impact on the author's position on the subject under research.

The author conducted a comprehensive analysis of the functioning of the state mechanism for the protection of human and citizen rights at the current stage of the development of the constitutional court. The focus was made on the approaches to understanding the mechanism of protection of human and citizen rights with the help of the Constitutional Court of Ukraine, and analysis of current legislation on this issue.

The works of Repetto (2022) on the evolution of the Venice Commission, various functions assigned to it, and relations with other institutional entities were taken into account during the research. The study of the methodological contribution that its activities can make to the creation of the European constitutional heritage occupies a special place in the work.

In turn, the article by Kobalia (2018) examines the main features of centralized and decentralized constitutional review in the context of the modern constitution and state power. Particular attention should be paid to the findings outlined in the article by Konca (2021) on the introduction of a monopoly on constitutional interpretation, which was considered as an institution that harmoniously corresponds to the semantic system arising from modern constitutions.

The article by Rabinovych (2021) on the causes of the long-term crisis of social legitimacy of the Constitutional Court of Ukraine is also worth special attention. The author proves the need to improve the institutional mechanism for electing constitutional judges in case of such crisis. The studies by Botelho (2021), Bumke and Vokuhle (2019) used in the article emphasize the role of constitutional justice in the transition from authoritarian regimes to democratic systems, consider the positive example of the German constitution, the German Federal Constitutional Court (BVerfG), and its case law.

The study of Chakim (2019), who emphasized that the constitutional complaint is the main part of the constitutional court, was used when shaping the author's position. The author made a detailed comparative analysis of the application of the constitutional complaint mechanism in three European countries and four members of the Association of Asian Constitutional Courts & Equivalent Institutions (AACC). Averyanova (2019) analysed the types of conflicts that can arise both within countries and between different states.

The author outlined such relevant vectors as objectivity, subjectivity, implementation in practice and indicated the need to develop a strategy of national self-preservation in complex and uncertain conditions of international security.

The active study of the issues selected for the research in this article confirms that the transformation of the institution of constitutional justice in the course of armed conflicts requires special attention, and states the lack of research in this field. Therefore, it is urgent to carry out a study according to new research criteria.

2. Methods

The conducted research is multi-vector and is in line with the current realities. The research design was built in view of geopolitical world transformations and the escalation of armed conflicts (Figure 1).

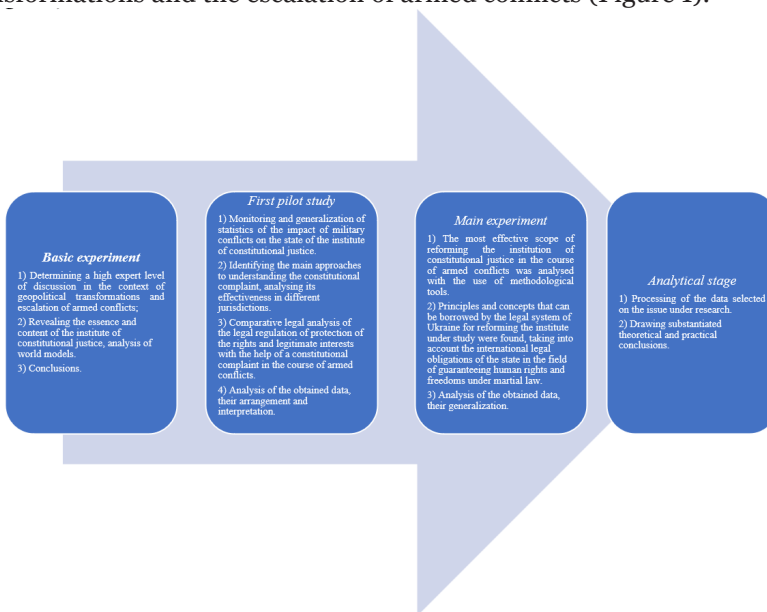


Figure 1: Research design. Source: authors.

The study of the constitutional and legal mechanism of guaranteeing human rights in the course of armed conflicts involved modern methods of cognition identified and developed by philosophy, history, sociology, state theory and law, legal sciences and supported by legal adaptive practice.

The methodological framework of the article consisted of a system of general philosophical, scientific and special methods. In view of the specifics of the issue being studied and the research objectives, a set of methods was used, the application of which made it possible to obtain substantiated results.

The methods of observation and comparison were the main practical tools. The observation method made it possible to draw analogies of the implementation of the right to submit a constitutional complaint in different states. This method also enabled to focus on the most promising reformation vectors of transformations of the studied institute and the Constitutional Courts of the selected countries. The method of comparison was used to carry out a comparative analysis of legal regulation and law enforcement practice in the field of constitutional justice in Germany, Austria, Spain, Azerbaijan, and Ukraine.

In aggregate, the mentioned methodological tools contributed to drawing well-founded conclusions and making proposals for the improvement of the institution of constitutional justice in Ukraine in the context of Russia's military aggression.

The historical method played a significant role in studying the evolution of the establishment of the institution of constitutional justice as such, its gradual transformations and effectiveness at each stage. The abstraction method was applied to study the characteristic features, functions, principles and structure of the legal mechanism of constitutional protection.

The sociological method was used in the study of development trends of the studied institute, as well as in establishing and revealing the factors of its development. The semantic method was applied to reveal the meaning of such terms as "constitutional complaint", "constitutional and legal mechanism", "ensuring the rights of citizens", etc., their scientific and practical significance, the possibility of transforming the terminological framework in constitutional law.

Modelling and forecasting methods were used to find the optimal model of organization and functioning of the legal mechanism of constitutional justice, as well as to determine its shortcomings that should be eliminated to ensure a practical result and the expected effect.

The critical method, which is based on the previous methods, helped to analyse the system of factors and trends affecting the development of the studied institute, to identify positive and negative ones among them, as well as to form a conceptual perspective of further measures to increase the effectiveness of its functioning in the context of armed conflicts.

In general, the research was conducted on the basis of a combination of ontological, epistemological and axiological analysis of the constitutional

and legal mechanism of guaranteeing constitutional rights in the course of armed conflicts.

3. Results

European countries adopted a centralized model of constitutional control. It is based on Hans Kelsen's concept of a constitutional court — a body specially created to exercise the power to invalidate laws that contradict the constitution. In this case, only one institution in the country, which is the constitutional court, can declare the law unconstitutional. There are significant differences among the "Kelsenian" constitutional courts in the European Union related to the competence granted to such courts. The scope of authority can be very large.

The Federal Constitutional Court of Germany can be an example here, as it is a role model for similar institutions established in other countries. Powers can also be quite narrow, as in the case of the Constitutional Council of France.

The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's consultative body on constitutional matters. The role of the Venice Commission is to provide legal advice to its member states. It provides assistance in bringing legal and institutional structures in line with European standards and international experience in the field of democracy, human rights and the rule of law.

The Venice Commission developed a Rule of Law Checklist, which included five benchmarks (Council of Europe, 2016). The legality is the first criterion, which means the supremacy of the law and the commitment of the public authorities to comply with it. Public authorities must respect both national and international law, and they shall implement and enforce it.

The second criterion is legal certainty, which is characterized by the simplicity of legislation, court decisions, the predictability of the law, the principle of non-retroactive application of law, compliance with the principle of *res judicata*. The third and fourth benchmarks are the prevention of abuse of power, the principle of equality before the law and non-discrimination.

The fifth criterion is access to justice: the judiciary must be independent and impartial, and all citizens must have the right to a fair trial. The Checklist also includes a recommendation for states that exercise constitutional justice and for state authorities to adopt legislation in accordance with the decision of the Constitutional Court. It is also obligatory to implement the decision of the Constitutional Court when it rules that the legislation violates the Constitution.

The Constitutional Courts of the European Union are part of a European and global association of courts intended to ensure the rule of law and guarantee human rights. This network includes constitutional courts of other countries and such European courts as the European Court of Human Rights (ECHR) and the European Court of Justice.

Cooperation was institutionalized within the framework of the Conference of European Constitutional Courts and the World Conference on Constitutional Justice. The latter is the result of the unification of linguistic or regional groups. It includes the Conference of European Constitutional Courts, the Association of Asian Constitutional Courts (AACC), the Ibero-American Conference on Constitutional Justice.

The aim is to strengthen the cooperation of members by organizing regular congresses, participation in regional conferences, seminars, exchange of experience and case law.

The experience of constitutional justice bodies gives grounds to state that constitutional control can be carried out in different forms through different procedures at the request of different entities. Constitutional judges are usually reputable lawyers, often appointed by the national parliament, in some cases — by the executive bodies or judiciary.

This reflects the dual — judicial and political — nature of the courts. The decentralized model of constitutional review is characterized by a specific form of control — by ordinary courts in the course of judicial review. The judiciary has the right to suspend the application of certain legal norms if they contradict constitutional rights. A special case of constitutional review is an abstract review of laws, which is a typical form of a centralized model of constitutional justice.

In this model, the constitutional review includes material and procedural components. The constitutional review can be divided into *ex-ante* (preventive) and *ex-post* (repressive) in temporal terms. The preventive review checks the compatibility of laws before publishing.

Ex-ante review can usually be initiated at the request of a narrow group of government bodies (for example, the President, the Cabinet of Ministers, the Speaker of the Parliamentary Chamber or a group of parliamentarians).

The review is exercised in the course of a complex law-making process. The Constitutional Court is effectively involved in this process, which has the opportunity to express its opinion on the constitutionality of the law being created.

Repressive review is more often exercised *ex post*, when a particular act begins to create legal consequences. The essential scope of *ex-post* review is much wider and goes beyond the basic legislation. A fairly large group of entities can initiate consideration of disputed issues in the Constitutional Court after the entry of a particular regulatory document into force.

These may be opposition parliamentarians, representatives of the executive and judicial authorities, officials of local self-government bodies, the general prosecutor, the ombudsman, state auditors, trade unions and religious associations. In turn, the list of objects of constitutional review is quite variable (Figure 2).

So, constitutional courts have both judicial and political influence. When the Constitutional Court recognizes a particular act unconstitutional, it is able to invalidate the act, thus removing it from the legal system. Sometimes the court expresses its position on how to interpret a regulatory provision in order to leave it in the constitutional field. In this case, a constitutionally acceptable interpretation shall be adopted.

A very important activity of the Constitutional Court is related to the complaint filed by the applicant. A constitutional complaint enables persons whose rights and freedoms have been violated to apply for protection directly to the Constitutional Court. Such violations are usually caused by the action of a public authority (or its failure to act). A constitutional complaint is both a special and an auxiliary measure. For example, the Constitutional Court of Austria (Verfassungsgerichtshoft) is entitled to consider complaints about laws, decrees, international treaties and administrative actions. But it is not entitled to consider a constitutional complaint against the actions of the judiciary (Verfassungsgerichtshofgesetz, 1953).

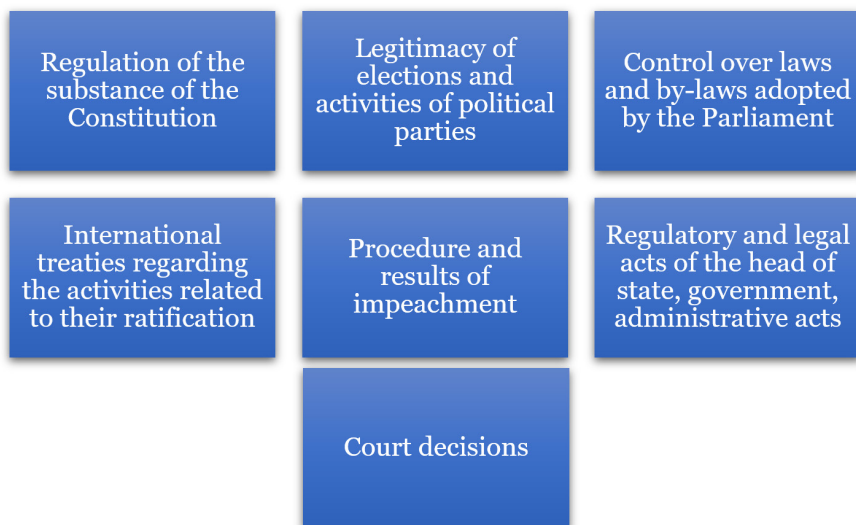


Figure 2: List of objects of constitutional review (grouped by the author).

A constitutional complaint in Germany is considered a model for other European countries. The Federal Constitutional Court of Germany (Bundesverfassungsgericht) is entitled to consider constitutional complaints related to the actions of public authorities. This includes complaints about the constitutionality of a law, an administrative act and even a court decision (Bundesverfassungsgerichtsgesetz, 1951).

The Constitutional Court of Spain (Tribunal Constitucional de España) also has the power to consider constitutional complaints known as *recurso de amparo* (individual appeals for protection). They seek constitutional protection of fundamental rights from parliamentary, governmental and administrative decisions, as well as judicial decisions (Legislación Consolidada, 1979). A variety of systems for submitting constitutional complaints, especially in Austria, Germany and Spain, evidence the effectiveness of the protection of fundamental rights.

In Asia, the Association of Asian Constitutional Courts (AACC) and similar institutions provides an opportunity for AACC members to regularly exchange ideas and share experiences in constitutional justice.

The AACC members have adopted different models of a system of constitutional justice. For example, Azerbaijan has the authority to consider constitutional complaints. Article 34(1) of the Law on the Constitutional Court of Azerbaijan (Law of the Republic of Azerbaijan, 2003) reads that a complaint with the Constitutional Court may be filed by any person who claims that his or her fundamental rights have been violated by a regulatory legal act of the legislative and executive authorities or an act of a municipality and the court.

The Constitutional Court can consider individual complaints against court decisions in the following cases: if the court failed to apply a regulatory legal act that should have been applied; if the court applied a regulatory legal act that should not have been applied; and if the court failed to properly interpret the regulatory legal act.

It should be noted that the proceedings in Austria, Germany, Spain and Azerbaijan have certain differences in terms of the time limit for filing a complaint to the Constitutional Court. The vector variability of constitutional complaints of the studied states is shown in Table 1.

Table 1. Variable indicators of filing constitutional complaints in Austria, Germany, Spain and Azerbaijan (summarized by the author).

	Object of a constitutional complaint	The subject of a constitutional complaint	Temporal limitations
Austria	complaints against laws, decrees, international treaties and administrative actions	any person who claims that he or she has been directly harmed by a violation of his or her rights	a complaint against an administrative decision shall be filed within six weeks upon its delivery
Germany	complaints regarding constitutionality of the law, administrative act and court decision	any person who claims that one of his or her fundamental rights has been violated by the government	a complaint against judicial and administrative decisions shall be filed within one month
Spain	complaint against decisions of the parliament, government and administrative decisions, court decisions	any individual or legal person, as well as the Public Defender and the Prosecutor's Office — in case of violation of rights or inconsistency of the law	deadlines for filing a complaint: 30 days (<i>amparo</i> against court decisions), 20 days (appeals against state or administrative decisions)
Azerbaijan	complaint against a regulatory legal act of the legislative and executive authorities, an act of the municipality and the court	any person who claims that his/her rights have been violated	a complaint shall be filed within six months from the date of entry into force of the decision of the court of last resort, entry into force of the regulatory legal act/ or in case of violation of the applicant's right to appeal to the court - within 3 months from the date of violation of rights

The period of armed conflicts is characterized by discrepancies in the understanding of the constitutionality of adopted legal acts. They may be related to the information uncertainty. There are discrepancies in the possible legal consequences of wartime-specific adopted regulations. There are also discrepancies about the proper limits of constitutional exceptions relating to, for example, the competence of military jurisdiction, treatment-related issues in times of armed conflict.

There may be typical discrepancies over the appropriate way to balance conflicting principles, such as discipline, with the duty to protect human rights when the law violates them. In this case, constitutional review embodies the perspective through which relevant courts seek to find long-term solutions that go beyond the current military conflict. The Constitutional Courts use objective and acceptable constitutional principles in their decisions to resolve the issues.

A constitutional complaint regarding the deportation of a Romanian citizen is pending before the Federal Constitutional Court of Germany (Bundesverfassungsgericht, 2022). The decision of the Administrative Court of Halle dated 18 May 2022 provides for the possibility of adequate (further) treatment of the applicant's mental illness in Romania even without taking into account the current situation in Romania after the start of the war in Ukraine.

The court makes its decision despite the medically proven re-traumatization that will almost certainly occur in the event of deportation. As a result, the Federal Constitutional Court of Germany ruled that the Federal Office for Migration and Refugees is prohibited from deporting the applicant to Romania before making a decision on the constitutional complaint.

It was noted that any inconvenience associated with the applicant's stay in the federal territory, which is extended for a particular period, has less impact. The need to carefully determine the impact of the displacement of refugees caused by the war in Ukraine on the reception and treatment of other groups of refugees in the host countries was also pointed out.

The states consider the system of social protection of servicemen as a component in the structure of social protection of the population. Moreover, states take into account the peculiarities determined by the specifics of the work of servicemen, the ultimate goal of which is a special kind of service — ensuring security.

In the current context of frequent occurrence of armed conflicts, the state focus on strengthening social protection of servicemen. This requires a qualitatively new attitude to the problem of implementing the guarantees established for servicemen by law, the need to improve their social status. For example, the Constitutional Court of Azerbaijan considers court appeals and carries out constitutional interpretation of the necessary legal provisions of the relevant laws. Some provisions of the laws of the Republic of Azerbaijan “On Pensions of Servicemen” and “On Occupational Pensions” were interpreted from the perspective of their application over time (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification concerned servicemen who received the right to a lifetime pension for long service on preferential terms. Some provisions of

the Law of the Republic of Azerbaijan “On the Status of Servicemen” and the Regulation “On Military Service” were clarified (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification was made on the right to receive, determining the amount and procedures for payment of compensation for unused regular leave by servicemen transferred to the reserve and discharged. Some provisions of the Law of the Republic of Azerbaijan “On Compulsory State Personal Insurance for Servicemen” were also clarified (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification concerned the increase of the amount of one-time insurance for servicemen and the obligation to pay the insurance amount provided in the legislation for servicemen, dead, missing, and wounded before the Law “On the Armed Forces of the Republic of Azerbaijan” dated 20 May 1997 came into force. In addition to the social protection of servicemen, special attention was paid to the interpretation of acquiring the status of servicemen. Some provisions of Article 333 of the Criminal Code of the Republic of Azerbaijan were clarified (Constitutional Court of the Republic of Azerbaijan, 2001).

The clarification related to the absence of the composition of a crime as a result of unauthorized absence from the republican muster point or evasion of military service after passing a medical examination. It also concerned issues of the constitutionality of holding persons who have the status of servicemen for voluntarily leaving a military unit or place of service criminally liable.

The appeal of the constitutional court in the form of a statement can also be an example of the activity of this court in the course of armed conflicts. In October 2020, the Constitutional Court of the Republic of Azerbaijan addressed a statement to all the Constitutional Courts of the world within the framework of the World Conference on Constitutional Justice, the Conference of European Constitutional Courts, as well as the Association of Asian Constitutional Courts and equivalent institutions (Constitutional Court of the Republic of Azerbaijan, 2020).

The statement emphasized that Armenia’s military provocations against Azerbaijan have become regular. The statement also referred to the occupation of the Nagorno-Karabakh region and seven neighbouring regions of Azerbaijan by the Armenian army. It was noted that many towns and villages were completely destroyed, and the local population underwent ethnic cleansing as a result of this occupation. There were 613 peaceful Azerbaijanis killed, including 63 children, 106 women, and 70 old people.

Besides, 1,275 people were taken hostage, the fate of 150 of them, including 68 women and 26 children, is unknown. It was brought to the notice of the constitutional courts that the decisions and resolutions adopted

by the UN, the Council of Europe, the OSCE, the European Union and other international organizations openly confirmed that Nagorno-Karabakh is an integral part of Azerbaijan. In 1993, the UN Security Council adopted four resolutions (882, 853, 874, 884) on the immediate Armenian troop pull-out from the occupied territories of Azerbaijan.

The Constitutional Court noted that Armenia has not executed these resolutions. It was also emphasized that the Strasbourg Court stated in the Decision of the European Court of Human Rights dated 16 June 2015 in the case of “Chiragiv *et al.* v. Armenia” that the processes in Nagorno-Karabakh were carried out under the control of Armenia.

The situation described above can become a direct example for the law enforcement practice on the territory of Ukraine. This is a constitutional, social and democratic state, which aims to unite with the European and international community. The Constitutional Court of Ukraine relies in its actions on European standards established by European institutions. The Court regularly refers to the Report of the Venice Commission on the Rule of Law (Council of Europe, 2011) and builds its reasoning upon the instruments included in the Rule of Law Checklist (Council of Europe, 2016).

The Constitutional Court of Ukraine also regularly addresses the Venice Commission regarding advisory opinions of *amicus curiae*. It is impossible to implement this direction without measures related to the development of an effective mechanism for the protection of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996).

The political and legal reforms carried out in the state were reflected in the functioning of the institution of constitutional justice. In Ukraine, this role is assigned to the Constitutional Court of Ukraine as the only representative of constitutional jurisdiction in the state (Verkhovna Rada of Ukraine, 2017).

The procedure for electing the Constitutional Court of Ukraine, its composition, term of office, principles and legal framework of activity are determined. The Court can be appealed in the form of a constitutional submission, a constitutional appeal from state bodies, such as, for example, the President of Ukraine, the required number of people’s deputies. Citizens of Ukraine, foreigners, stateless persons, and legal entities can file a constitutional complaint.

It should be noted that the institution of constitutional complaint appeared in Ukraine after the 2016 judicial reform. In 2021, the Constitutional Court of Ukraine adopted 609 acts, including 10 decisions on submissions and complaints, issued 165 resolutions on refusal to open constitutional proceedings in a case and 6 resolutions on closing constitutional proceedings (Constitutional Court of Ukraine, 2022).

In June 2022, Ukraine became a candidate for EU membership, having proved the European opportunities for Ukraine. From 1996 to June 2022, the Venice Commission prepared 96 opinions for Ukraine regarding the state of the reform process (Constitutional Court of Ukraine, 2022). In this context, special emphasis is placed on achieving complete independence of the judicial system, which is especially relevant in the period of reconstruction and restoration of Ukraine after the end of the military conflict. In December 2020 and March 2021, the Venice Commission also presented opinions related to the Constitutional Court reform.

The need to adopt legislative acts on the selection of judges of the Constitutional Court in accordance with the recommendations of the Venice Commission occupied a special place. The relevant legislation should be adopted by the end of 2022.

The Constitutional Court of Ukraine determined the rule of law to be a mechanism for exercising control over the use of state power and protecting people from the arbitrariness of the authorities (Constitutional Court of Ukraine, 2019). In the wartime, constitutional justice directs maximum efforts to understand the specifics of the implementation of constitutional provisions, in particular, on the protection of human rights and the activities of the state and judicial authorities during the wartime.

Making amendments to the Law of Ukraine “On Social and Legal Protection of Military Men and Members of Their Families” (Verkhovna Rada of Ukraine, 2022) on granting and paying one-time monetary support is an example of the effective work of the Constitutional Court of Ukraine. Decision of the Constitutional Court No. 1-p(II)/2022 (Constitutional Court of Ukraine, 2022) in the case on the constitutional complaint of Polishchuk was the reason for the preparation of this draft law.

In Decision No. 12-r/2018 dated 18 December 2018, the Constitutional Court of Ukraine provided that citizens of Ukraine who defend the Motherland perform constitutionally significant functions. The court emphasized that the Armed Forces of Ukraine and other military formations play the main role in the defence of Ukraine during the armed aggression of the Russian Federation, therefore the social protection of servicemen should be improved.

Therefore, limitation of the payment of a one-time cash benefit in a larger amount if a higher group of disability (or a higher percentage of the loss of working capacity) is established to two years only is unjustified. In this way, fair social guarantees were established for servicemen, conscripts and reservists, who have the right to one-time cash benefit.

The war with the Russian Federation required the creation of the National Council for the Recovery of Ukraine from the War. The development of the constitutional justice occupies a special place in the Draft Plan for the

Recovery of Ukraine developed by this Council (National Council for the Recovery of Ukraine from the War, 2022). The fundamental problem of reforming the institution of constitutional justice during the martial law in Ukraine is the low level of regulation and the lack of real practice of the Constitutional Court (National Council for the Recovery of Ukraine from the War, 2022).

The Draft Plan also mentions problems in the procedure for appointing, dismissing and bringing to disciplinary liability judges of the Constitutional Court of Ukraine. There are problems with monitoring the compliance with anti-corruption legislation, constitutional proceedings and the legal organization of the Constitutional Court's activities. These problems, including the fight against non-compliance with professional ethics standards and tolerance of corruption, were also reflected in the Strategy for the Development of the Judiciary and Constitutional Justice for 2021-2023 (President of Ukraine, 2021).

The priority goals and deadlines for their achievement set on the basis of the problems outlined in the Draft Plan for the Recovery of Ukraine (National Council for the Recovery of Ukraine from the War, 2022) were determined and agreed upon (Figure 3).

In Ukraine, preparations for the development of legal initiatives are being made in order to implement the corresponding plan. Their purpose is to improve the work of the Constitutional Court during the war and in the post-war period. Special attention was paid to regulating the communication policy, improving the presentation of information about the activities of the Constitutional Court on its official website.

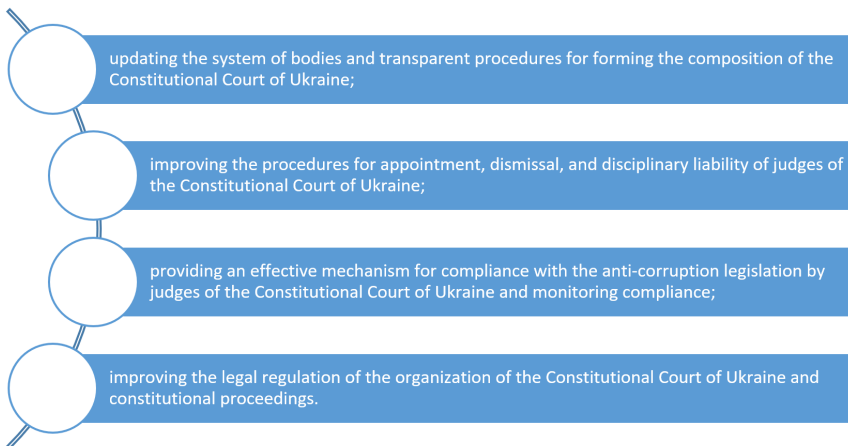


Figure 3: Priority goals of the development of the constitutional justice in Ukraine in the course of armed conflict. Source: authors.

4. Discussion

It can be stated that the protection of the Constitution is a special legal and political activity with its special purpose and content. The creation of constitutional courts after World War II was determined by the inability of the legislature to protect people's rights. It was characterized by the lack of effective constitutional justice systems and distrust of ordinary courts, which were too deferential to the former authoritarian regime (Botelho, 2021). Constitutional justice has become the territory of the merging of power lines of the political and legal space, being the territory of the battle for the significance of the Basic Law.

In this case, the constitutionality of public authority acts became the subject of consideration, while the logic of political appropriateness began to conflict with the logic of finding a fair balance of interests (Rabinovych, 2021).

It was proved that the Constitutional Court is usually considered as a special body. It has the powers of constitutional supervision or the powers to invalidate legislative acts of the parliament and other acts of public authorities, which are recognized to be contrary to the constitution. So, the Constitutional Court has become the main defender of the constitutional system and its principles in most democracies (Baraniuk, 2018).

It can be stated that the explicit (usually written) manifestation of the will of political power, which secures an exclusive constitutional space for the court, determined the formation of the institution of centralized control. The centralized model of constitutional review is the best mechanism of action from the perspective of modern constitutions, as well as the systemic and meaningful implementation of the protection of fundamental human rights (Kobalia, 2018). It is appropriate to consider constitutional courts as judicial-type bodies that have a monopoly on the evaluation of the constitutionality of legislation in the political system (Castillo-Ortiz, 2020).

The confirmation that the transfer of a constitutional problem to the Constitutional Court depends on the activity and qualification of the subjects initiating the process is unconditional. The implementation of the decision of the Constitutional Court on unconstitutionality also requires cooperation between the court and other bodies responsible for the adoption and application of the law (Kłopotcka-Jasińska, 2022).

It is stated that the protection and observance of human rights is the basis of any constitutional system, which usually includes restrictions imposed to ensure the reasonable exercise of these rights by all members of society. The extent to which Constitutional Courts can support the exercise of constitutional rights by overturning laws that impose excessive restrictions on such rights, among other things, becomes extremely important in times of armed conflicts (Dinokopila and Kgoboge, 2021).

There is no doubt that the constitutional review exercised by the Constitutional Courts is the standard for the implementation of the right to a fair trial (Bumke and Vokuhle, 2019). A fairly new view of the substance and content of the method of judicial constitutional review is being formed in the course of armed conflicts, especially in the field of control over the enforcement of acts of public authorities during the martial law (Verkhovna Rada of Ukraine, 2022).

The principle of proportionality, which is fundamental in determining the limits of human rights, is undoubtedly one of the components of the criterion “respect for human rights”. This which must be taken into account when limiting rights during armed conflicts. This basic principle is manifested in a proportional and reasonable relationship between the goal of limiting particular human rights and the means that the state uses to limit it (Slinko *et al.*, 2022).

The aim of the Constitutional Courts during armed conflicts is to prevent unlawful legislative norms that directly contradict the Constitution. Amendments to the Law of Ukraine “On Social and Legal Protection of Military Men and Members of Their Families” are positive. They finalize the previous provisions of the articles and provide the possibility of implementing additional guarantees of social protection for servicemen, conscripts and reservists (Panfilova, 2022).

In this regard, the effective interconnection of all branches of government both for the purpose of effective support of servicemen and for the implementation of the planned defence tactics of the state is relevant in the context of the protection of territorial integrity and sovereignty (Verkhovna Rada of Ukraine, 2022).

It can be concluded that it is necessary to introduce a transparent procedure for the competitive selection of all candidates for the position of judge of the Constitutional Court of Ukraine in order to improve the process of reforming the Constitutional Court of Ukraine, especially in the course of an armed conflict. Moreover, professionalism in constitutional law and solid moral reputation should be the basis of verification (Rabinovych, 2021).

According to the researcher, it is necessary to increase the share of science capital in the composition of the Court through the application of relevant professional quotas. It is very important to involve reputable international experts in the tender commission in the course of armed conflicts.

Conclusions

The constitutional review means that the Constitutional Courts can invalidate unconstitutional legal provisions or overturn other

unconstitutional acts of public authorities. Compared to general legal activities, the aim of constitutional review is to protect the sovereignty of the people, the political system of the nation, the legal foundations of the state, and the inviolable values of society. It provides preventive and retrospective judicial review of disputed norms in the centralized model of constitutional review, when the Constitutional Court is separated from the ordinary ones.

The armed conflicts and forced migration make both the military and the civilian population face serious challenges related to changed living conditions. As a result, people incur serious adverse health consequences. The result is more careful attention to the constitutional clarification of social protection norms. Clarifications are also needed regarding the understanding of the status of a serviceman, certain requirements during military service.

Damage to the population is one of the most important results of armed conflicts. Persons who died or were seriously injured directly as a result of hostilities can be considered as losses. The latter also include the affected population, whose constitutional rights were violated by imposed legislative restrictions, or by the inconsistency of the legal provisions, which were in force during the period of martial law, with the constitution. In these difficult conditions, the Constitutional Courts shall protect the constitution, fundamental rights, while arbitrating between levels and bodies of government.

Along with such forms of appeal to the Constitutional Court as a constitutional submission and a constitutional appeal, a constitutional complaint becomes more important in the course of armed conflicts. This is one of the legal mechanisms that strengthens the guarantees of protection of human rights against any actions of the state and all branches of government that violate their rights. Constitutional courts in many countries have adopted a system of constitutional complaints in various models.

The interpretation of the legislative provisions of the Republic of Azerbaijan regarding the constitutional rights of servicemen and the consideration of complaints by the constitutional courts of Germany and Ukraine during the armed conflict regarding social guarantees and health protection are examples of countries that are impacted by armed conflicts directly or indirectly during and after the armed conflict.

The armed aggression of the Russian Federation against Ukraine aggravated a number of unresolved issues in the field of constitutional justice. The lack of regulation and practical experience regarding the functioning of the Constitutional Court of Ukraine under martial law was distinctive for the Constitutional Court of Ukraine during the armed conflict.

This situation requires the urgent reform of the institution of constitutional justice. Improving the process of reforming the Constitutional Court in these difficult conditions requires the increased share of science capital in the composition of the court through the application of appropriate professional quotas.

The fulfilment of the tasks that Ukraine sets before the Constitutional Court will enable an urgent response to the public demand for justice and will improve the work of the Constitutional Court. The vector of the author's further research will be the activities of the reformed institution of constitutional justice in Ukraine.

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