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## **THE ISSUE OF CONSTITUTIONALISM TOWARDS DEVELOPMENT OF CONSTITUTIONAL STATE IN MODERN SOCIETY**

To date, constitutionalism has become as important to society as the issue of good governance.

Most scholars believe that the concept of constitutionalism is the intellectual legacy of liberalism and the practice of forming American statehood, and later of European countries.

Constitutionalism can be defined as the doctrine that governs the legitimacy of government action, and it implies something far more important than the idea of legality that requires official conduct to be in accordance with pre-fixed legal rules [1].

Although constitutionalism is sometimes regarded as a synonym for limited government, that is only one interpretation and by no means the most prominent one historically. More generally constitutionalism refers to efforts to prevent arbitrary government [2].

Constitutionalism (from the Latin. *Constitutio* - installation, device) includes:

1) The system of knowledge of political and legal character, the subject of which are the fundamental values of democracy, substantiation of the need to establish a constitutional order, analysis of the history and practice of constitutional development of the state, their groups and the world community.

2) The mechanism of state power, limited by the constitution; a political system based on the constitution and constitutional methods of government [3].

The following general principles of Ukrainian constitutionalism are distinguished:

1. the supremacy of the constitution in the legal system;
2. the rule of law in society and the state;
3. separation and restriction of state power;
4. the sovereignty of the Ukrainian people;
5. mutual responsibility of the state and the individual;
6. realities of rights and freedoms, their protection, inviolability, guarantee;

7. open civil society;
8. continuity of constitutional ideas.

Constitutionalism is not identical to the constitution. German researcher S. Voight points out that constitutionalism is a normative concept and should not be confused with the de facto constitution used in any society. Constitutionalism is a multilevel system that functionally transcends the constitution and law in general, reflecting the peculiarities of the mentality and existence of the people [4, p. 408].

The system of Ukrainian constitutionalism is formed by: 1) the current Constitution of Ukraine as a normative legal act; 2) theory, history, ideology of the Constitution of Ukraine; 3) the existing constitutional order [5].

Together, these elements form the legal, scientific, historical, ideological and organizational foundations of constitutionalism [5].

The legal foundations of constitutionalism are primarily defined by the constitution as a normative act of the highest legal force, the Basic Law of the state, which regulates the most important social relations and has its own structure, a special procedure for adopting and amending [5].

The scientific basis is formed by the theory of constitutionalism, which encompasses: the achievement of foreign scientific thought, the teachings of national thinkers of the past, modern ideas and concepts of Ukrainian constitutionalism [5].

The historical foundations of constitutionalism are formed by such components as: preconditions, origins, main stages, tendencies, directions and forms, results and achievements of formation and development of Ukrainian constitutionalism [5].

The ideological foundations of constitutionalism are defined by a system of legal ideas, views, concepts, theories based on certain scientific and political knowledge and ideas, which aims to influence the formation and development of legal, political and moral culture [5].

The organizational framework is mediated by the constitutional order (as a system of public relations established in accordance with the constitution), the main components of which are the state and social order [5].

The problem of constitutionality of the constitution is connected with the problem of the constitutionality of the state. The meaning of this concept is considered using two approaches.

- 1) a positivist approach by which the constitutional state is recognized as constituting the basic law(s);
- 2) a natural-law approach that constitutionally recognizes a state in which guarantees of human rights and separation of powers are ensured.

Consequently, the purpose of the system of constitutionalism is the constitutional legitimacy as a regime of exact and steadfast observance of the constitution and other constitutional legal acts by all the subjects to whom they are addressed, the actual operation of the hierarchy of normative legal acts, in

the system of which the Constitution has supreme legal force.

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## **ПРАВО НА ОСВІТУ В СИСТЕМІ ПРАВ ЛЮДИНИ ТА ГРОМАДЯНИНА**

Право на освіту займає чільне місце у системі прав людини [3]. На сьогодні система освіти перебуває у стані реформування. У Законі України «Про освіту» задекларовано багато змін. Закон гарантує та забезпечує автономію закладів освіти, що дає їм змогу самостійно, ефективно та якісно функціонувати, регламентує засади громадського самоврядування та контролю у закладах освіти [2]. Відповідно до положень закону забезпечується прозорість та інформаційна відкритість закладів освіти, визначаються права та обов'язки учасників навчального процесу.

Важливою нормою закону стало створення інституту освітнього омбудсмена, що, у свою чергу, забезпечує додатковий захист прав і свобод усіх учасників освітнього процесу.

На сучасному етапі виникли значні труднощі під час реалізації права на освіту на тимчасово окупованих та прилеглих до них територіях. Незважаючи на заходи, вжиті Кабінетом Міністрів України та Міністерством освіти і науки України, ситуація залишається складною. На