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## SECTION 2

# CONSTITUTIONALISM AS MODERN SCIENCE

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### LEGISLATIVE DRAFTING TECHNIQUES AS A MEANS OF GIVING EFFECT TO THE RULE OF LAW. THE CASE OF UKRAINE

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#### **Summary**

Ukraine is currently carrying out some reforms recommended by the Venice Commission of the Council of Europe and by the European Commission (in order to become a Member State of the European Union), in order to strengthen democracy, the Rule of Law, human rights and protection of minorities.

The purpose of this article is to demonstrate that legislative drafting techniques are a means to give effect to the principle of the Rule of Law, when it comes to Ukraine; and to recommend that Ukraine improves the way its institutions draft/scrutinise bills, and adopts best practices from Europe.

The methods of this article will be those of an analysis of constitutional law. The article will rely on the definition of the principle of the Rule of Law (given by AV. Dicey and developed by Lord Bingham) and the idea that legislative drafting techniques can be seen as a means to give effect to such a principle. The Ukrainian current constitutional context (viz., the impossibility of amending its Constitution under martial law, due to Article 157 of the Constitution of Ukraine) will be considered. Some pieces of Ukrainian legislation will be analysed in the light of the Venice Commission's recommendations. Some of the main legislative drafting techniques and their aims, in the light of the best practices from Europe, will also be analysed.

The results of the article will set out that in such a current constitutional context, where the recommended reforms can be implemented only by Acts of Parliament (although some amendments to the Ukrainian Constitution would be appropriate), in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Therefore, the scientific novelty of the article will be to test general concepts with regards to the exceptional constitutional circumstances of Ukraine.

The conclusions, thus, is that Ukrainian institutions (such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of the Republic of Ukraine) should improve the way they draft/scrutinise bills, adopting best practices from Europe, in order to improve the quality of primary legislation and, thus, to give effect to the principle of the Rule of Law.

**Key words:** constitutional law, quality of legislation, European Commission for Democracy though Law of the Council of Europe (Venice Commission), accession to the European Union, Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, President of the Republic of Ukraine.

## 1. Introduction

Ukraine is currently carrying out some reforms recommended by the Venice Commission of the Council of Europe and by the European Commission (in order to become a Member State of the European Union), in order to strengthen democracy, the Rule of Law, human rights and protection of minorities. Although some amendments to the Ukrainian Constitution would be appropriate to this end, the Ukrainian Constitution cannot be amended under martial law, due to Article 157 of the Ukrainian Constitution. Therefore, the recommended reforms have been implemented in Ukraine by Acts of Parliament.

In such an exceptional constitutional context, thus, in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Therefore, the scientific novelty of the article will be to test general concepts (viz., the quality of legislation as a means to give effect to the principle of the Rule of Law) with regards to the exceptional constitutional circumstances of Ukraine; and to recommend that Ukraine improves the way its institutions draft/scrutinise bills, and adopts best practices from Europe, in order to improve the quality of its primary legislation and, thus, to give effect to the principle of the Rule of Law.

The methods of this article will be those of an analysis of constitutional law. The article will rely on the definition of the principle of the Rule of Law (given by A.V. Dicey), and on the view that legislative drafting techniques is a means to give effect to the principle of the Rule of Law (as stated by Lord Bingham) (Section 2). The current Ukrainian constitutional context (viz., the impossibility of amending the Constitution under martial law, due to Article 157 of the Constitution of Ukraine) will be considered (Section 3). Some pieces of Ukrainian legislation will be analysed in the light of the Venice Commission's recommendations, under which some «provisions are extremely long and too detailed», due to Ukraine's long-standing legislative tradition consisting of very detailed and formalised texts (Section 4). Some of the best practices from Europe, when it comes to legislative drafting techniques, will be analysed to this end (Section 5).

## 2. The principle of the Rule of Law and legislative drafting techniques

From the traditional British perspective, the principle of the Rule of Law (or, in other words, the supremacy of the law) has three meanings. First, no man is punishable or can be lawfully made to suffer in body or deprived of their goods unless they had violated the law which has been established in an ordinary way and applied by an ordinary court. Second, every man, whatever be his rank or condition,

is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Third, the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts (Dicey, 1915, p. 107 ff.).

In civil law jurisdictions, those principles would be called the principle of legality, the principle of equality and (as Dicey himself would say) the principle under which the security to the rights of individuals results from the general principles of the Constitution (Dicey, 1915, p. 115).

Some decades later, Lord Bingham listed some principles, in order to explore what he called «the ingredients» of the Rule of Law. Under the first principle, he pointed out that «[t]he law must be accessible and so far as possible intelligible, clear and predictable» (Bingham, 2010, p. 37).

Given that the Rule of law contains such a principle, it is important to deduce how the form of legislation (viz., the way legislation is structured, organised and expressed) can give effect to it. As has been demonstrated, principles of legislative drafting play a key role in determining the form of legislation, thus to give effect to the Rule of Law (Cormacain, 2022, p. 13 f.).

Some Authors pointed out that the quality of legislation is the extent to which the criteria emanating from constitutional principles are met (Xanthaki, 2014, p. 2; Voermans, 2017, p. 26; Albanesi, 2019, p. 53 ff.). However, constitutional principles of proper lawmaking can proactively guide legislative decision making only following «a meticulous thinking process that involves analysis, design and drafting» (Mousmouti, 2019, p. 16).

Such general concepts already established by scholars, will be tested here with regards to Ukraine, which is currently facing exceptional constitutional circumstances.

## 3. The current Ukrainian constitutional context and the crucial role of the quality of primary legislation to give effect to the principle of the Rule of Law in Ukraine

Ukraine is currently facing exceptional constitutional circumstances.

Under article 157 of the Constitution of Ukraine, «[t]he Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency». In Ukraine martial law was declared on 24<sup>th</sup> February 2022, when the Russian Federation's full-scale invasion started.

Ukraine is currently carrying out some reforms recommended by the European Commission for Democracy through Law (Venice Commission, 2022a; Venice Commission 2022b; Venice Commission, 2023a; Venice Commission 2023b) and by the

European Commission (European Commission, 2022), in order to become a Member State of the European Union, to strengthen democracy, the rule of law, human rights and protection of minorities. Under Article 8 of the Constitution of Ukraine, «in Ukraine, the principle of the rule of law is recognised and effective». Under Article 49 of the Treaty of the European Union and the Copenhagen criteria, EU Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Some amendments to the Ukrainian Constitution would be appropriate for this purpose, for example regarding the appointment/election of the Judges of the Constitutional Court (Albanesi, 2023a; Albanesi, 2023b); or the establishment of autonomous regions as a tool to protect national minorities (Albanesi, 2023c).

However, given article 157 Const., the aforementioned recommended reforms have been implemented in Ukraine by Acts of Parliament. For example, this is the case of Law of Ukraine No. 3277-IX, On amendments to certain legislative acts of Ukraine on clarifying the provisions on competitive selection of candidates for the position of a Judge of the Constitutional Court of Ukraine; and Law of Ukraine No. 3389-IX, On the introduction of amendments to the Law of Ukraine 'On National Minorities (Communities) in Ukraine' regarding some issues of exercising the rights and freedoms of persons belonging to national minorities (communities) of Ukraine.

In such an exceptional constitutional context, thus, it is clear that in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Acts of Parliament aimed at implementing those recommendations could give effect to the Rule of Law, only if they are of a good quality, as stated above.

However, if one reads some past opinions of the Venice Commission, the quality of legislation in Ukraine poses several issues.

#### **4. The Venice Commission and the quality of Ukrainian's legislation**

Among other recommendations that mention some specific issues concerning the quality of legislation (Venice Commission, 2021), one can find some recommendations about Ukraine.

In 2009, while examining some Ukrainian bills, the Venice Commission stated that «it has to be regretted the opinion for making extremely long, too detailed, reiterative, confusing and extremely rigid laws [...]. The result is a Law which [...] is very complex and confusing, and will possibly be very difficult for citizens to understand, for political actors

to handle, and for [...] courts to deal with» (Venice Commission, 2009, paragraph 3).

In 2010, the Venice Commission noted that the Ukrainian legislator «tries to mention or to enumerate all the possible facts which can form the elements of a legal rule. Therefore, the legal texts are quite voluminous and contain elements which are perhaps not necessary, or which could be delegated to subordinate legislation (e.g. a regulation). One negative effect is certain: the rules are difficult to find and to know, also for the practising judge, and, if the law does not provide for a rule for facts in a certain case (no catalogue of facts is complete) the judge might be feeling completely at sea» (Venice Commission, 2010, paragraph 9).

In 2022, while examining the draft law On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis, the Venice Commission noted that: «some draft provisions are extremely long and too detailed. During the online meetings, the delegation was informed about Ukraine's longstanding 'legislative tradition' consisting of very detailed and formalised texts. [...] Aware of the complexity of the issue going beyond a specific opinion, the Venice Commission would like to draw the attention of the Ukrainian legislators to its regularly updated Compilation of opinions and reports concerning the law-making procedures and the quality of the law. Among many useful findings based on the variety of legislation of the member States, the Commission recalls the 'golden rule' for structuring and drafting legislative acts, namely that an article should not contain more than three paragraphs (or subparagraphs), a paragraph should not contain more than three sentences, and a sentence should not contain more than one idea» (Venice Commission, 2022a, paragraph 67; Venice Commission, 2022b, paragraph 70).

From these opinions of the Venice Commission, one can easily argue that the quality of legislation in Ukraine poses several issues.

#### **5. Legislative drafting techniques and best practices from Europe**

As mentioned, legislative drafting techniques are a means to give effect to the principle of the Rule of Law. As demonstrated, this is especially true when it comes to Ukraine, due to the exceptional constitutional circumstances that Ukraine is facing. However, the quality of Ukrainian legislation poses some issues, if one reads the opinions of the Venice Commission. One might thus argue that Ukraine should improve the way its institutions draft/scrutinise bills, and should adopt best practices from Europe.

Before drawing conclusions about Ukraine, it might be useful to give some examples of the main legislative drafting techniques adopted in Europe. It could also be of help to describe the main goals of using legislative drafting techniques.

The main goals of using legislative drafting techniques (Xanthaki, 2013, p. 5 ff.) are as follows. Efficacy is the capacity of a piece of legislation to achieve the regulatory aims that it is set to address. Effectiveness is the capacity of a legislative text: to foresee the main projected outcomes and use them in the drafting formulation process; to state clearly its objectives and purpose; to provide for necessary and appropriate means and enforcement measures; to assess and evaluate real-life effectiveness in a consistent and timely manner. Efficiency is when a legislative act uses the minimum costs for the achievement of optimum benefits of the legislative action. Clarity is the quality of being clear and easily understood. Precision is the exactness of expression or detail. Unambiguity is the capacity of its wording of having certain or exact meaning. Plain language is a concept that encapsulates a qualifier of language that is subjective to each reader to use.

The main legislative drafting techniques (Xanthaki, 2013, p. 60 ff.; Albanesi, 2019, p. 171 ff.) regard the language of legislative acts (e.g., use of specific tenses, use of modal auxiliaries such as may or shall, semantic unambiguity, syntactic unambiguity, punctuation, etc.); the structure of legislative act (e.g., title, articles, paragraphs, preliminary provisions such as definitions, substantive provisions, final provisions, such as transitional provisions or schedules, etc.); the relations between legislative acts (e.g., repeal, express amendments, exceptions, etc.); specific contents of legislative acts (e.g., criminal provisions, tax legislation, etc.); specific legislative acts (e.g., Acts of Parliament, delegated legislation, emergency decrees, etc.).

The United Kingdom is a good model for Ukraine to look at.

Historically, in the U.K. the view of legislative drafting as a specialised discipline with its own rules and principles rests on Jeremy Bentham's idea of Nomography or the Art of Inditing Laws (Bentham, 1843, p. 231 ff.). In 1869 Lord Thring wrote the Instructions for Draftsmen (Lord Thring, 1877). A centralized body (the Office of Parliamentary Counsel) was established within the Executive, with the task of drafting bills. Before the establishment of the Office of Parliamentary Counsel, bills had been drafted by independent counsel employed by the relevant department. Such a system had led to inconsistency in drafting legislation, because «[t] here was no security for uniformity of language, style, or arrangement in laws»; it also created problems with planning policies, because «[d]

ifferent Departments introduced inconsistent Bills, and there was no adequate provision by which the Prime Minister, or the Cabinet as a whole, could exercise effective control over measures fathered by individual Ministers» (Ilbert, 1901, p. 83 f.).

In the following decades, in the U.K. legislative drafting rules were developed in treatises such as Erskine May (Natzler & Hutton, 2019, p. 593 ff.), Garth Thornton's Legislative Drafting (Xhantaki, 2013) and Craies on Legislation (Greenberg, 2017, p. 407 ff.).

From a theoretical perspective, in the U.K. the nature of legislative drafting has been framed as a specialised discipline (Xhantaki, 2014, p. 10 ff.). From such a perspective, legislative drafting is seen as a sub-discipline of law: in particular, as phronesis, i.e. the praxis of subjective decision-making on factual circumstances or the practical wisdom of the subjective classification of factual circumstances to principles and wisdom.

In Continental Europe, the machinery model is different. Government bills are drafted by lawyers within the relevant Department. This model has some pros and cons.

According to some Authors, only lawyers within the Department, who are expert in the relevant field, have a deep knowledge of the legal framework concerning that field. Moreover, the departmental model fits with the Continental Europe parliamentary system of government, where the final contents of legislation are constantly negotiated in Parliament within the Majority party or between the Majority and the Opposition (Mattarella, 1993, p. 127).

On the other hand, this model has two unfortunate consequences, if compared to the British model (Albanesi, 2021, p. 320). First of all, the relevant Department is essentially focused on dealing with policy and legal aspects of the bill. Thus, it does not take account of legislative drafting needs. Secondly, this system does not allow departmental officers to develop specific expertise in legislative drafting.

However, in Continental Europe, a good system of parliamentary scrutiny of the quality of legislation has been established. For example, in Italy both the Chamber of deputies and the Senate established a Comitato per la legislazione, a bipartisan Committee that is tasked with scrutinising bills, using legislative drafting guidelines as the legal standards of their scrutiny (Albanesi, 2021, p. 323 ff.).

It will be up to Ukraine to choose the best model for its legal system. Surely, the British model shows that legislative drafting is a specialised discipline that requires training and skilled professional officers. On the other hand, the Continental model might sit better within the constitutional framework of the Ukrainian form of government. However, in this case, parliamentary scrutiny of the quality of legislation



in Ukraine should be strengthened and the European Continent could be taken as a model to this end.

## 6. Conclusions

The conclusions, thus, are as follows.

The Ukrainian institutions (such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of the Republic of Ukraine) should improve the way they draft/scrutinise bills, and adopt best practices from Europe, in order to improve the quality of its primary legislation and, thus, to give effect to the principle of the Rule of Law.

The relation between the quality of legislation and the Rule of law is strong in every legal order (Section 2). However, this plays a greater role within the exceptional constitutional circumstances that Ukraine is facing. Given the impossibility to amend its Constitution, Ukraine has relied on Acts of Parliament to carry out the recommended reforms. However, those acts should be of a high quality in order to give effect to the Rule of Law (Section 3).

The actual issues posed by Ukrainian legislation in terms of quality of legislation (Section 4) demonstrates that Ukraine should improve the way its institutions draft/scrutinise bills, and should adopt best practices from Europe (Section 5).

The legal challenge that Ukraine is facing in carrying out the reforms, recommended by the Venice Commission and the European Commission in order to become a Member State of the European Union, is huge. Therefore, one should bear in mind that giving effect to the principle of the Rule of Law requires a good quality of legislation, especially when, as in Ukraine, it is not possible to amend the Constitution, given the exceptional constitutional circumstances that Ukraine is dealing with.

## Bibliography:

1. **Dicey, A.V.** (1915). *Introduction to The Study of The Law of The Constitution*. London: Macmillan. 8<sup>th</sup> Edition.
2. **Bingham, T.** (2010). *The Rule of Law*. London: Penguin Books.
3. **Cormacain, R.** (2022). *The Form of Legislation and The Rule of Law*. Oxford: Hart.
4. **Xanthaki, H.** (2014). *Drafting legislation. Art and Technology of Rules for Regulation*. Oxford and Portland: Hart.
5. **Voermans, V.** (2017). *Legislation and Regulation*. – Karpen, U. & Xanthaki, H. (eds.). *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners*. Oxford and Portland: Hart, pp. 17–32.
6. **Albanesi, E.** (2019). *Teoria e tecnica legislativa nel sistema costituzionale*. Napoli: Editoriale scientifica.
7. **Mousmouti, M.** (2019). *Designing Effective Legislation*. Cheltenham, UK – Northampton, MA, USA: Edward Elgar Publishing.
8. **Venice Commission** (2022a). *Urgent Opinion on the draft law «On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis»*, CDL-AD(2022)046.
9. **Venice Commission** (2022b). *Opinion on the draft law «On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis»*, CDL-AD(2022)054.
10. **Venice Commission** (2023a). *Opinion on the Law on National Minorities (Communities)*, CDL-AD(2023)021.
11. **Venice Commission** (2023b). *Follow-up opinion to the opinion on the Law on National Minorities (Communities)*, CDL-AD(2023)028.
12. **European Commission** (2022). *Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Ukraine’s application for membership of the European Union*, COM(2022) 407 final.
13. **Albanesi, E.** (2023a). *The Appointment/Election of the Judges of the Italian Constitutional Court and Some Recommendations for Ukraine in the Light of Italy’s Best Practices and the Principles of the Venice Commission*. – *Право України*, 7, pp. 24–38.
14. **Albanesi, E.** (2023b). *The Reform of the Constitutional Court of Ukraine. Why Sovereignty Is Not An Issue – Щербанюк, О.В. та ін (редкол). Сучасні виклики та актуальні проблеми судової реформи в Україні: Матеріали VII Міжнар. наук.-практ. конф. (27 жовтня 2023р., Чернівці). Чернівці, pp. 15–21.*
15. **Albanesi, E.** (2023c). *The Rights of Persons Belonging to National Minorities in Ukraine. Current (Legislative) and Future (Constitutional) Reforms – А.П. Гетьман та ін (редкол). Права людини та демократія як фундаментальні основи українського конституціоналізму: зб. тез наук. доп. і повідомл. Міжнар. наук. конф.: XVI Тодиківські читання (24 листоп. 2023 р., м. Харків) / Нац. юрид. ун-т ім. Ярослава Мудрого. Харків: Право, pp. 101–103.*
16. **Venice Commission** (2021). *Compilation of Venice Commission Opinions and Reports on Law-making Procedures and The Quality of The Law*, CDL-PI(2021)003.
17. **Venice Commission** (2009). *Comments on The Draft Law on The All-Ukrainian Referendum by Mr. O. Lavrynovych (Member of Parliament of Ukraine)*, CDL-AD(2009)004.
18. **Venice Commission** (2010). *Joint Opinion on The Draft Law on The Judicial System and The Status of Judges of Ukraine*, CDL-AD(2010)003.
19. **Bentham, J.** (1843). *Nomography; or The Art of Inditing Laws – The Works of Jeremy Bentham. Published under the superintendence of his executor, John Bowring. Vol. III*. London: Simpkin, Marshall & Co.

**20. Lord Thring** (1877). *Practical Legislation. The Composition and Language of Acts of Parliament and Business Documents*. London: Stationery Office.

**21. Ilbert, C.** (1901). *Legislative Methods and Forms*. Oxford: Clarendon Press.

**22. Natzler, D. & Hutton, M.** (eds.) (2019). *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. London: Lexis Nexis. 25<sup>th</sup> Edition.

**23. Xanthaki, H.** (ed.) (2013). *Thornton's Legislative Drafting*. Haywards Heat: Bloomsbury Professional.

**24. Greenberg, D.** (2017). *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation*. London: Sweet & Maxwell. 11<sup>th</sup> Edition.

**25. Mattarella, B.G.** (1993). *Il ruolo degli uffici legislativi dei Ministeri nella produzione normativa – Nomos*, pp. 119–171.

**26. Albanesi, E.** (2021). *Parliamentary Scrutiny of the Quality of Legislation within Europe – Statute Law Review*, 42, pp. 313–334.

#### References:

**1. Dicey, A.V.** (1915). *Introduction to The Study of The Law of The Constitution*. London: Macmillan. 8<sup>th</sup> Edition. [in English].

**2. Bingham, T.** (2010). *The Rule of Law*. London: Penguin Books. [in English].

**3. Cormacain, R.** (2022). *The Form of Legislation and The Rule of Law*. Oxford: Hart. [in English].

**4. Xanthaki, H.** (2014). *Drafting legislation. Art and Technology of Rules for Regulation*. Oxford and Portland: Hart. [in English].

**5. Voermans, V.** (2017). *Legislation and Regulation*. – Karpen, U. & Xanthaki, H. (eds.). *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners*. Oxford and Portland: Hart, pp. 17–32. [in English].

**6. Albanesi, E.** (2019). *Teoria e tecnica legislativa nel sistema costituzionale [Legislative theory and technique in the constitutional system]*. Napoli: Editoriale scientifica. [in Italian].

**7. Mousmnouti, M.** (2019). *Designing Effective Legislation*. Cheltenham, UK – Northampton, MA, USA: Edward Elgar Publishing. [in English].

**8. Venice Commission** (2022a). *Urgent Opinion on the draft law «On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis»*, CDL-AD(2022)046. [in English].

**9. Venice Commission** (2022b). *Opinion on the draft law «On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis»*, CDL-AD(2022)054. [in English].

**10. Venice Commission** (2023a). *Opinion on the Law on National Minorities (Communities)*, CDL-AD(2023)021. [in English].

**11. Venice Commission** (2023b). *Follow-up opinion to the opinion on the Law on National Minorities (Communities)*, CDL-AD(2023)028. [in English].

**12. European Commission** (2022). *Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Ukraine's application for membership of the European Union*, COM(2022) 407 final. [in English].

**13. Albanesi, E.** (2023a). *The Appointment/Election of the Judges of the Italian Constitutional Court and Some Recommendations for Ukraine in the Light of Italy's Best Practices and the Principles of the Venice Commission*. – *Право України*, 7, pp. 24–38. [in English].

**14. Albanesi, E.** (2023b). *The Reform of the Constitutional Court of Ukraine. Why Sovereignty Is Not An Issue* – Щербанюк, О.В. та ін (редкол). *Сучасні виклики та актуальні проблеми судової реформи в Україні [Modern challenges and actual problems of judicial reform in Ukraine]: Матеріали VII Міжнар. наук.-практ. конф. (27 жовтня 2023 р., Чернівці)*. Чернівці, pp. 15–21. [in English].

**15. Albanesi, E.** (2023c). *The Rights of Persons Belonging to National Minorities in Ukraine. Current (Legislative) and Future (Constitutional) Reforms* – А. П. Гетьман та ін (редкол). *Права людини та демократія як фундаментальні основи українського конституціоналізму [Human rights and democracy as fundamental foundations of Ukrainian constitutionalism]: зб. тез наук. доп. і повідомл. Міжнар. наук. конф.: XVI Тодиківські читання (24 листоп. 2023 р., м. Харків) / Нац. юрид. ун-т ім. Ярослава Мудрого*. Харків: Право, pp. 101–103. [in English].

**16. Venice Commission** (2021). *Compilation of Venice Commission Opinions and Reports on Law-making Procedures and The Quality of The Law*, CDL-PI(2021)003. [in English].

**17. Venice Commission** (2009). *Comments on The Draft Law on The All-Ukrainian Referendum by Mr. O. Lavrynovych (Member of Parliament of Ukraine)*, CDL-AD(2009)004. [in English].

**18. Venice Commission** (2010). *Joint Opinion on The Draft Law on The Judicial System and The Status of Judges of Ukraine*, CDL-AD(2010)003. [in English].

**19. Bentham, J.** (1843). *Nomography; or The Art of Inditing Laws – The Works of Jeremy Bentham. Published under the superintendence of his executor, John Bowring. Vol. III*. London: Simpkin, Marshall & Co. [in English].

**20. Lord Thring** (1877). *Practical Legislation. The Composition and Language of Acts of Parliament and Business Documents*. London: Stationery Office. [in English].

21. **Ibert, C.** (1901). *Legislative Methods and Forms*. Oxford: Clarendon Press. [in English].
22. **Natzler, D. & Hutton, M.** (eds.) (2019). *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. London: Lexis Nexis. 25<sup>th</sup> Edition. [in English].
23. **Xanthaki, H.** (ed.) (2013). *Thornton's Legislative Drafting*. Haywards Heat: Bloomsbury Professional. [in English].
24. **Greenberg, D.** (2017). *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation*. London: Sweet & Maxwell. 11<sup>th</sup> Edition. [in English].
25. **Mattarella, B.G.** (1993). *Il ruolo degli uffici legislativi dei Ministeri nella produzione normativa [The role of the legislative offices of the Ministries in the production of legislation]* – Nomos, pp. 119–171. [in Italian].
26. **Albanesi, E.** (2021). *Parliamentary Scrutiny of the Quality of Legislation within Europe – Statute Law Review*, 42, pp. 313–334. [in English].

## ТЕХНІКА ПРОЕКТНОГО ЗАКОНОДАВСТВА ЯК ЗАСІБ РЕАЛІЗАЦІЇ ВЕРХОВЕНСТВА ПРАВА. СПРАВА УКРАЇНИ

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### Анотація

Зараз Україна проводить деякі реформи, рекомендовані Венеціанською комісією Ради Європи та Європейською комісією (для того, щоб стати державою-членом Європейського Союзу), з метою зміцнення демократії, верховенства права, прав людини та захист меншин.

Метою цієї статті є продемонструвати, що техніка розробки законів є засобом реалізації принципу верховенства права, коли йдеться про Україну; а також рекомендувати Україні покращити спосіб, у який її інституції розробляють/перевіряють законопроекти, і перейняти найкращі практики з Європи.

Методи цієї статті будуть методами аналізу конституційного права. Стаття спиратиметься на визначення принципу верховенства права (надане А.В. Дайсі та розроблене лордом Бінгемом) та ідею про те, що методи розробки законів можна розглядати як засіб реалізації такого принципу. Буде розглянуто нинішній конституційний контекст України (а саме неможливість внесення змін до Конституції в умовах воєнного стану через статтю 157 Конституції України). Деякі законодавчі акти України будуть проаналізовані з урахуванням рекомендацій Венеціанської комісії. Також буде проаналізовано деякі з основних методів розробки законодавчих актів та їхні цілі у світлі передового досвіду Європи.

За результатами статті буде встановлено, що в такому нинішньому конституційному контексті, де рекомендовані реформи можуть бути реалізовані лише актами парламенту (хоча деякі зміни до Конституції України були б доцільними), в Україні якість первинного законодавства стає вирішальною щодо запровадження верховенства права. Тому науковою новизною статті буде перевірка загальних концепцій щодо виняткових конституційних обставин України.

Висновки, таким чином, полягають у тому, що українські інституції (такі як Верховна Рада України, Кабінет Міністрів України та Президент України) повинні покращити спосіб розробки/перевірки законопроектів, запозичуючи передовий досвід Європи щоб підвищити якість первинного законодавства і, таким чином, реалізувати принцип верховенства права.

**Ключові слова:** конституційне право, якість законодавства, Європейська комісія за демократію через право Ради Європи (Венеціанська комісія), вступ до Європейського Союзу, Верховна Рада України, Кабінет Міністрів України, Президент України.