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DECISIONS OF THE CONSTITUTIONAL COURT OF UKRAINE: PROBLEMS OF IMPLEMENTATION

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One of the urgent problems of the practice of the Constitutional Court of Ukraine is the implementation of its acts, the non-solution of which calls into question not only its guarantee of the supremacy of the Constitution of Ukraine as the Basic Law of the state throughout Ukraine, but also the authority of the Constitutional Court of Ukraine as a body of constitutional jurisdiction. The fulfillment by the Constitutional Court of Ukraine of the tasks assigned to it is achieved not so much by adopting the relevant acts as by their implementation and implementation. Without the implementation of decisions and conclusions of the Constitutional Court of Ukraine, all its previous activities regarding the consideration and resolution of relevant cases are nullified, it simply loses its meaning.

As you know, the acts of the Constitutional Court of Ukraine are self-sufficient, that is, those that are mandatory, final, have a direct effect and do not require confirmation or duplication by any public authorities to enter into force. The obligation to enforce the decision of the Constitutional Court of Ukraine is a requirement of the Constitution of Ukraine, which has the highest legal force in relation to all other normative legal acts. In accordance with Art. 69 of the Law «On the Constitutional Court of Ukraine», decisions and conclusions of the Constitutional Court of Ukraine are equally binding.

The problem is that the current legislation does not define the principles and mechanisms for the execution of decisions and conclusions of the Constitutional Court of Ukraine. As a result, a significant part of such acts do not find their practical implementation.

It seems that the problems of implementing the prosecution, as well as the implementation of the decision itself, are associated with the lack of a clear control mechanism that would allow to identify the fact of non-compliance with the decision of the Constitutional Court of Ukraine, the result of which could be prosecution.

Also, in the situation of Russian military aggression that has developed today in Ukraine, an important means of ensuring the implementation of acts of the Constitutional Court of Ukraine is to maintain the high authority of the body of constitutional justice, to increase the level of legal awareness and legal culture of citizens, and especially to persons authorized to

exercise state power. Important conditions for the effectiveness of the Constitutional Court, including the implementation of its acts, are the establishment in Ukraine of the foundations of a legal, democratic state, as well as ensuring political and socio-economic stability in the country.

Keywords: conclusions and decisions of the Constitutional Court of Ukraine; constitutional jurisdiction; acts of the Constitutional Court of Ukraine; constitutional control; implementation of acts of the Constitutional Court of Ukraine.

Formulation of the problem. Acts of the Constitutional Court of Ukraine are specific sources of law, since these documents do not coincide in their legal characteristics with either regulations of general or individual importance, or with precedent decisions; they only regulate specific legal relations between certain subjects in accordance with the law. The special legal status of the acts of the Constitutional Court of Ukraine is also indicated by the purpose for which they are adopted – to ensure the rule of law and the supreme legal force of the Constitution of Ukraine.

The purpose of the article is to analyze current legislation with a view to identifying gaps in the implementation of the acts of the Constitutional Court of Ukraine.

Main material presentation An important issue today is the fact that current legislation does not contain a definition of the concept of acts of the Constitutional Court of Ukraine. The Constitution of Ukraine, the Law of Ukraine «On the Constitutional Court of Ukraine», and the Rules of Procedure of the Constitutional Court of Ukraine define only the types of such acts. Thus, Article 83 of the Law of Ukraine «On the Constitutional Court of Ukraine» provides for the following types of acts of the Constitutional Court [1]:

1. The Court adopts decisions, provides opinions, issues rulings, and issues interim orders.
2. The Court adopts acts on issues not related to constitutional proceedings in the form of a resolution.

Decisions of the Constitutional Court of Ukraine may be final (i.e., those that mark the completion of consideration by the Court of cases within its exclusive competence) and organizational (a form of resolving organizational issues).

Final decisions are made on issues referred by the Constitution of Ukraine [2] to the exclusive competence of the Constitutional Court of Ukraine.

The Court's decisions are adopted by:

- 1) by the Grand Chamber
 - on the results of consideration of cases on constitutional petitions on the constitutionality of laws of Ukraine and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea;
 - on the official interpretation of the Constitution of Ukraine;
 - on the results of consideration of cases on constitutional complaints in case the Senate refuses to consider a case on a constitutional complaint at the discretion of the Grand Chamber;

- 2) by the Senate – based on the results of consideration of cases on constitutional complaints [1].

Organizational decisions are made at the plenary sessions and meetings of the Constitutional Court of Ukraine on the organization of the internal activities of the Constitutional Court of Ukraine: on approval of the Rules of Procedure, regulations on the Secretariat, standing committees, on the establishment of the College of Judges of the Constitutional Court of Ukraine, on termination of powers of a judge of the Constitutional Court of Ukraine, on early dismissal of the President of the Constitutional Court of Ukraine, his/her deputies, on business trips of judges, etc.

The Grand Chamber provides opinions of the Constitutional Court of Ukraine in cases concerning [1]:

1) compliance of the current international treaties of Ukraine with the Constitution of Ukraine or those international treaties submitted to the Verkhovna Rada of Ukraine for the purpose of giving consent to their binding nature;

2) compliance with the Constitution of Ukraine (constitutionality) of the issues proposed for submission to an all-Ukrainian referendum at the people's initiative;

3) compliance with the constitutional procedure for investigating and considering the case of removal of the President of Ukraine from office by impeachment;

4) compliance of the draft law on amendments to the Constitution of Ukraine with the requirements of Articles 157 and 158 of the Constitution of Ukraine;

5) violation of the Constitution of Ukraine or laws of Ukraine by the Verkhovna Rada of the Autonomous Republic of Crimea;

6) compliance of normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with the Constitution of Ukraine and laws of Ukraine.

Rulings are a form of resolution by the Constitutional Court of procedural issues of its activity. The Constitutional Court of Ukraine adopts procedural rulings on the opening of proceedings and on the refusal to open proceedings in a case before the Constitutional Court of Ukraine. In addition, in accordance with the Rules of Procedure, the Constitutional Court of Ukraine issues rulings on acceptance or refusal to accept appeals for consideration, suspension of constitutional proceedings in a case, consolidation of constitutional proceedings, opening of new proceedings in a case, form of hearing of a case, attachment of documents to the case file, appointment of an expert examination, etc. [3].

Rulings are issued in the form of a protocol or a separate act. Accordingly, they are divided into procedural rulings and protocol rulings (for example, on bringing to responsibility for violation of the established order in the Courtroom of the Constitutional Court of Ukraine).

In constitutional proceedings under paragraph 9 of part one of Article 7 of the Law of Ukraine «On the Constitutional Court of Ukraine» the Court may issue an interim order to take measures to secure a constitutional complaint [1].

Thus, the acts of the Constitutional Court of Ukraine are special legal acts adopted by the Constitutional Court in a special procedural order in order to exercise its powers as a constitutional jurisdiction body and are final and binding throughout Ukraine.

Acts of the Constitutional Court of Ukraine are a means of expressing its will as a body of constitutional jurisdiction, a means of legalizing the results of its consideration of material, procedural or organizational issues.

Acts of the Constitutional Court of Ukraine have certain peculiarities, which are primarily due to the nature of the constitutional jurisdiction body. The peculiarities of the acts of the Constitutional Court of Ukraine are that they

– have a special subject (object) – the acts of the Constitutional Court of Ukraine resolve issues within its exclusive competence. No other state body is authorized to resolve issues that are the subject of the Constitutional Court of Ukraine;

– are adopted in a special procedural order;

– are generally binding throughout Ukraine;

– are final and not subject to appeal;

– are a means of guaranteeing the supremacy of the Constitution of Ukraine throughout the of the state, ensuring the direct effect of its provisions and the formation of a single constitutional understanding [4].

There is no consensus in the professional community either on the definition of the concept of a legal position of a constitutional jurisdiction body, or on its legal nature and binding nature, or on the correlation of a legal position with other structural elements of acts of a constitutional justice body. At the same time, the lack of certainty in judgments about the nature of acts (legal positions) of constitutional jurisdiction bodies has a detrimental effect not only on their legitimacy, but also on lawmaking and law application processes in general.

Decisions of the constitutional court of Ukraine: problems of implementation

The uncertainty of the legal nature of the acts of the Constitutional Court of Ukraine also leads to problems in the implementation of the decisions of the Constitutional Court of Ukraine, since the methods of execution of decisions directly depend on the degree of their legal force, binding nature, finality, etc.

Article 151-2 of the Constitution of Ukraine stipulates that decisions made by the Constitutional Court of Ukraine are binding, final and cannot be appealed [2]. In other words, the binding nature of the decisions adopted by the Constitutional Court of Ukraine is one of the principles on which the activities of the Constitutional Court of Ukraine are based, and in practice should be implemented by executing or complying with the provisions of such a decision. Article 97 of the Law of Ukraine «On the Constitutional Court of Ukraine» [1] enshrines a dispositive norm that provides for the right of the Constitutional Court of Ukraine to establish in the decision the procedure and terms of its execution, oblige the relevant state bodies to ensure control over the execution of the decision, and require written confirmation of the execution of the decision from the relevant bodies. Article 98, which is of a referential nature, provides for liability for failure to execute decisions of the Constitutional Court of Ukraine. Chapter 7 of the Rules of Procedure of the Constitutional Court of Ukraine [3] stipulates that the Constitutional Court of Ukraine monitors the status of execution of decisions, and based on the results of this monitoring, resolves issues related to their non-execution at its meeting.

As we can see, the current national legislation provides for the regulation of the execution of decisions of the Constitutional Court of Ukraine, but these norms are usually dispositive in nature, do not contain a clear procedure for the execution of decisions of the Constitutional Court of Ukraine and a mechanism for monitoring the effectiveness of the execution of such decisions. This leads to a misunderstanding of their obligations by the parties to constitutional proceedings and the relevant bodies and persons involved in the process of execution of the decisions of the Constitutional Court of Ukraine, further non-execution of decisions in general, complication of the process of application of legal norms, and in the future may lead to the spread of legal nihilism, negative reputation of the Constitutional Court of Ukraine and other bodies, as well as devaluation of the Basic Law [5, p. 20].

It should be noted that the enforcement of the decisions of the Constitutional Court of Ukraine should be carried out exclusively on a voluntary basis, as there is no regulatory framework or practical basis for the enforcement of the decisions of the Constitutional Court of Ukraine. The legal acts regulating the enforcement of decisions of courts and other bodies do not provide for the enforcement of a decision of a court of constitutional jurisdiction. As a result, the legal reality is a situation in which the decisions of the Constitutional Court of Ukraine are recognized as binding, but such recognition has no real enforcement effect.

Pursuant to Article 152 of the Constitution of Ukraine, if laws and other acts do not comply with the Constitution of Ukraine or if the procedure for their consideration, adoption or entry into force established by the Constitution of Ukraine has been violated, they shall be declared unconstitutional in whole or in part by a decision of the Constitutional Court of Ukraine. In this case, they cease to be effective from the date of the CCU's decision on their unconstitutionality, unless otherwise provided by the decision itself, but not earlier than the date of its adoption. This provision stems from the fact that CCU decisions have direct effect and do not require confirmation by any public authorities to enter into force, as stated in the CCU Decision of December 14, 2000, No. 15-rp/2000 [6].

According to T.O. Tsymbalistyi: «Implementation of the CCU decisions on declaring a legal act or its individual provisions unconstitutional does not require any special procedure, they should be implemented as a legal norm» [7, p. 20]. However, the CCU decision, which recognizes a certain act or provision as unconstitutional, does not establish a legal norm, on the contrary, it recognizes the relevant provision as invalid, so it is not possible to implement the CCU decision as a legal norm, since there is no legal norm itself. The prescription contained in such a CCU decision can only be implemented by further refraining from applying or using legal acts or their provisions that have been declared unconstitutional. Therefore, it would be worthwhile to provide for a separate mechanism for the implementation of the decision of the Constitutional Court of Ukraine, which would allow monitoring the further application of

an act or provision that has been declared unconstitutional by higher authorities and their officials or employees.

It should be noted that the Law of Ukraine «On the Constitutional Court of Ukraine» does not contain a provision on the prejudicial effect of the decisions of the Constitutional Court of Ukraine. This is due to the fact that the fact of unconstitutionality established by the Constitutional Court of Ukraine in its decision does not require additional justification and the obligation of courts to comply with the said prescription, as it is self-evident.

It is believed that the establishment of prejudicial effect in the decisions of the Constitutional Court of Ukraine can serve as a platform for developing a mechanism for the execution of such a decision, which could be further transformed to enforce other court decisions. Due to the fact that the decisions of a court of constitutional jurisdiction express prescriptions on the constitutionality or unconstitutionality of legal acts, as well as interpret the Constitution of Ukraine, i. e. contain general provisions that are not a direct call to action or inaction, it is not possible to determine a generally accepted proper mechanism for the enforcement of such a decision. Instead, the legislator empowers the Constitutional Court of Ukraine to establish in its decision, in particular, the procedure and terms of its execution, as well as to oblige the relevant state bodies to ensure control over the execution of the decision [1], which, in turn, the Constitutional Court of Ukraine may not use. Therefore, it would be advisable to enshrine this not as a right of the Constitutional Court of Ukraine, but as its duty. The Constitutional Court of Ukraine will independently provide for a mechanism for the execution of its own decision in a particular case, which will be considered the only correct and regulated one [5, p. 22].

It should be noted that the implementation of the decisions of the Constitutional Court of Ukraine is affected not only by the lack of a mechanism for its implementation, but also by the lack of effective control over such implementation. As rightly noted by scholars, verification (control) of the implementation of decisions on the unconstitutionality of a legal act in whole or in a separate part can be carried out by consistently monitoring the progress of legislative work to eliminate the gaps caused by the court decision; for those decisions which determine the procedure for their implementation, it is worth checking the availability of a corresponding response on the official website of the Verkhovna Rada of Ukraine: draft laws, planning and procedure for consideration of issues, consideration of agenda items, transcripts of plenary sessions

According to V. E. Skomorokha, the unsatisfactory state of implementation of the decisions of the Constitutional Court of Ukraine is, firstly, due to the special nature of the decisions of the Constitutional Court of Ukraine, which is similar in consequences and mechanism of implementation to other legal acts which abolish certain norms, and therefore, ensuring their implementation should be similar to the implementation of laws of Ukraine, decrees of the President of Ukraine, etc. and guaranteed primarily by the Head of State; secondly, due to the lack of systematic scientific research of the practice and mechanism of implementation of the decisions of the Constitutional Court of Ukraine; thirdly, with the absence of liability for non-execution or improper execution of decisions of the Constitutional Court of Ukraine by persons with special status to whom the acts of the Court are addressed [9, p. 119].

The latter statement of the scholar was resolved by establishing in Part 4 of Art. 382 of the Criminal Code of Ukraine liability for intentional failure by an official to comply with a decision of the Constitutional Court of Ukraine and intentional failure to comply with the opinion of the Constitutional Court of Ukraine [10]. At the same time, there are no cases of bringing perpetrators to justice for failure to comply with a decision of the Constitutional Court of Ukraine.

It seems that the problems with the implementation of prosecution, as well as the execution of the decision itself, are related to the lack of a clear control mechanism that would allow to identify the fact of non-compliance with the decision of the Constitutional Court of Ukraine, which could result in prosecution.

Indeed, there is no special body in Ukraine that would control the execution of the decisions of the Constitutional Court of Ukraine, but according to part 1 of Article 97 of the Law of Ukraine «On the

Constitutional Court of Ukraine», the Constitutional Court of Ukraine may oblige the relevant state bodies to ensure control over the execution of the decision, but this is the right of the Constitutional Court of Ukraine, which it may not exercise. It seems that the Constitutional Court of Ukraine itself could become such a body in view of the following.

Firstly, the body that made the decision has the right to monitor the further fate of this decision, in particular, to monitor its implementation and take appropriate measures. Secondly, the main task of the Constitutional Court of Ukraine is to ensure compliance of legal acts with the Constitution of Ukraine, and the application of a provision that is declared unconstitutional by the decision of the Constitutional Court of Ukraine should be regarded as a violation of the provisions of the Basic Law, i.e. a violation whose resolution is within the scope of the purpose of the court of constitutional jurisdiction. Thus, the Constitutional Court of Ukraine will be able to simultaneously monitor compliance with the Constitution of Ukraine and the implementation of its own decision [5, p. 19–24].

Conclusions. Thus, to summarize, it should be said that the problems of implementation of the acts of the Constitutional Court of Ukraine are related to the legal nature of such acts, uncertainty of the subjects who have to execute the decisions, lack of an established mechanism for execution and control over execution, and bringing the perpetrators to justice. It seems advisable to change the declarative nature of the rules providing for the implementation of CCU decisions to a binding one, as well as to assign the responsibility for monitoring the implementation of relevant decisions to a constitutional court.

Also, in the current situation of Russian military aggression in Ukraine, an important means of ensuring the implementation of the acts of the Constitutional Court of Ukraine is to maintain the high authority of the constitutional justice body, to raise the level of legal awareness and legal culture of citizens, especially those authorized to exercise state power. Important conditions for the effectiveness of the Constitutional Court, including the implementation of its acts, are the establishment of the principles of a legal, democratic state in Ukraine, as well as ensuring political and socio-economic stability in the country.

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РІШЕННЯ КОНСТИТУЦІЙНОГО СУДУ УКРАЇНИ: ПРОБЛЕМИ РЕАЛІЗАЦІЇ РІШЕНЬ

Реалізація Конституційним Судом України покладених на нього завдань досягається не тільки прийняттям відповідних рішень і висновків, але і їх виконанням, впровадженням в життя. Без реалізації актів Конституційного Суду України зводиться нанівець вся його попередня робота щодо розгляду і вирішення відповідних справ, вона просто втрачає зміст. Тому однією з актуальних проблем практики діяльності Конституційного Суду України є реалізація його актів, не вирішення якої ставить під сумнів не лише гарантування ним верховенства Конституції України як Основного Закону держави, а й авторитет Конституційного Суду України як органу конституційної юрисдикції.

Як відомо, акти Конституційного Суду України є самодостатніми (мають пряму дію), остаточними та обов'язковими до виконання, і для набуття ними законної сили не потребують підтвердження жодних органів державної влади. Відповідно ж до ст. 69 Закону «Про Конституційний Суд України», обов'язковими до виконання рівною мірою є висновки і рішення Конституційного Суду України. Тобто обов'язок виконання рішень органу конституційної юрисдикції є вимогою Конституції України, яка має найвищу юридичну силу щодо всіх інших нормативно-правових актів.

Проблема вбачається в тому, що чинне національне законодавство не передбачає принципів і механізму виконання рішень і висновків Конституційного Суду України. Як наслідок, значна частина цих актів не можуть бути практично реалізовані.

Можна припустити, що проблеми застосування притягнення до відповідальності, так само як і реалізація самого рішення, зумовлені відсутністю встановленого механізму контролю, який би дозволив виявити факт невиконання рішення Конституційного Суду України, наслідком чого могло би стати притягнення до відповідальності.

В умовах російсько-української війни для забезпечення реалізації актів Конституційного Суду України важливо підтримувати високий авторитет органу конституційної юстиції, постійно підвищувати рівень правосвідомості та правової культури громадян, а особливо осіб, які мають повноваження на здійснення публічної влади. Важливими умовами ефективності діяльності Конституційного Суду, в тому числі і реалізації його актів, є утвердження в Україні засад правової, демократичної держави, а також забезпечення політичної та соціально-економічної стабільності в країні.

Ключові слова: висновки та рішення Конституційного Суду України; конституційна юрисдикція, акти Конституційного Суду України; конституційний контроль; виконання актів Конституційного Суду України.