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THEORETICAL AND LEGAL ASPECTS OF CONSTITUTIONAL RULES IN THE SYSTEM OF LEGAL REGULATION

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The article covers one of the pressing theoretical and methodological issues of jurisprudence regarding the role of constitutional law in the system of legal regulation. Using the method of system analysis, the author examines legal regulation, the system of legal regulation, and the legal regulation mechanism. Legal regulation, i.e., the impact on social relations through legal means, is one of the properties of the legal system. The system of legal regulation features simultaneously the integrity, stability and dynamism. The stabilizing role of the system of legal regulation is ensured by the relevant rules of constitutional law, i.e. principles, definitions, and conflict of laws. These rules promote compatibility of the legal regulation system elements, ensure the required completeness of legal regulation, sufficient to regulate important social relations, and legalize the development strategy. The fact that the legal regulation system features the quality of stability does not mean that the system is rigid and not object to change. Dynamism means that the system of legal regulation is in motion, changes its characteristics, loses some elements and acquires others. Such transformations do not affect the stability; they are manifested in a change in the interaction patterns between elements. The rules of the constitutional law, which add dynamism to the system of legal regulation, constitute the rules of behavior; they represent specific regulation. The classification of these rules is based on the main elements of the legal regulation system: a single object of legal regulation; a single method of legal regulation; and the process of regulation. The importance of the role of constitutional and legal rules in the system of legal regulation is highlighted by the analysis of substantive and procedural rules. The rules of the constitutional law contribute to the stability of the legal regulation system, and add dynamism to the system, ensuring the ability of the system to adapt to the performance of various tasks and functions.

Key words: constitutional law; legal rules; system of legal regulation; legal regulation mechanism; rules of constitutional law.

Introduction. In legal science, much attention is paid to the research of legal rules. The general theory of law usually analyzes the essence, structure, functions, classification, and place of legal rules in the system of law. Given that constitutional law is a leading branch of national law, the study of its rules is of particular importance for the entire system of legal regulation, and has a general theoretical nature, which means developing new theoretical provisions to the theory of rules within the constitutional law doctrine.

Theoretical and legal aspects of constitutional rules in the system of legal regulation

Such scholars as M. O. Baimuratov, L. D. Voievodin, Y. O. Voloshyn, L. I. Zamorska, P. M. Rabinovych, O. F. Skakun, S. H. Stetsenko, V. L. Fedorenko, Y. S. Shemshuchenko, et al. have devoted their works to the issues of defining a legal rule as an element of the modern system of law.

The purpose of this article is to study the theoretical foundations of determining the role of constitutional law in the system of legal regulation.

Outcome. The concept of the “legal regulation system” includes the category of “legal regulation”. Scholars are debating its content. No. single approach has been developed yet. Several approaches have been proposed in the national theory of law, all of which can be subdivided into two major categories. According to the first one, legal regulation is broadly understood as all forms of legal influence of the state on human behavior. Such influence can be exercised through the regulation of life; it can be informational or motivational. In this approach, the concepts of legal regulation and legal influence are equated.

According to the second approach, legal regulation is understood narrowly as a component of legal influence. The concepts of legal influence and legal regulation are distinguished. When characterizing legal regulation, we are talking only about the intervention of the state in social relations in the form of legal rules, i.e. regulation exclusively through legal orders.

Legal regulation is a feature of the legal system. In the theory of law, the legal system usually means a set of interdependent legal means governing social relations and phenomena of legal reality characteristic of a particular state. This is a synthesized concept reflecting a set of legal phenomena that exist in society, are interrelated and have a legal impact on life. The elements of the legal system include legal rules, legal practice, legal ideology, sources of law, interpretive acts, individual legal acts, and legal relations.

Scholars identify various components of the legal system, including negative ones, such as legal nihilism and legal conflicts. At the same time, the legal regulation mechanism is characterized as a system of legal means that influence social relations [1, p. 204].

The legal regulation mechanism and the legal system are considered as a part and as a whole. The legal regulation mechanism unites in full, only important legal means regulating social relations (legal rules, legal facts, legal relations and implementing regulations) [2, p. 26, 27].

Unlike the concept of the “legal system”, the concept of “legal regulation mechanism” allows not only to combine the phenomena of legal reality, but also to present them in a systemic and dynamic manner.

A. A. Andreev proposes to consider the legal regulation mechanism not as a “mechanism” directly, but as a consistent interaction (algorithm) of the elements forming the same, pursuing a common goal [3, p. 127].

In accordance with these stages, the legal regulation mechanism includes the following elements: legal rules, legal facts, legal relations, acts of exercising rights and obligations, and acts of applying rules. The legal regulation mechanism includes the following elements: the regulatory framework (legal rules and regulations), legal relations, individual acts, legal awareness, and legal culture.

Legal regulation, i. e., the impact on social relations through legal means, is one of the properties of the legal system. This impact is carried out through successively changing stages that make up the legal regulation mechanism.

The concept of “mechanism” came to legal science from technical disciplines, as there was a need to describe social processes in interaction. A mechanism implies a stage, a sequential passage through certain stages of legal regulation.

A system is a set of interdependent elements. Various horizontal and vertical links may be formed between the elements, which do not always move sequentially. The system of legal regulation can be viewed as an objective union of functionally interdependent legal means that form horizontal and vertical links, which exert legal influence on social relations and regulate life.

The system of legal regulation features integrity, i. e. the ability to maintain qualitative specificity in a transforming environment and complicated social relations. Integrity is the most complex and multidimensional quality of a system that cannot be reduced to the simple interdependence of its elements.

Any integral system has both the properties of stability and dynamism. In the system of legal regulation, these properties are manifested in the objective existence of a relevant type of rules. These are the rules that add stability to the system of legal regulation and the rules that make it dynamic.

In systemic research, one of the methods of systemic analysis is the method of identifying a conceptual element that serves as a link between all other elements.

In the study of the system of legal regulation, such link is the rule of law. The system of legal regulation is manifested in a variety of types of legal rules, which indicate various links that exist between them. The properties and functions of individual units, i.e. elements of the system, are determined by the place they occupy within the whole, i.e. the system. In the system of legal regulation, there are rules that add stability and rules that ensure the dynamism and variability of the system. The rules of the constitutional law add stability to the system of legal regulation.

In the national legal doctrine, the idea of the integrative role of constitutional law as the main and systemic branch of law is supported and developed in the context of constitutionalization of the legal order on the basis of judicial interpretation of constitutional provisions and legislative support for implementation, and is considered within the framework of the purpose and task of constitutional regulation [4, p. 56].

The stability of a system is generally understood as its resilience to internal and external influences, which allows the system to maintain its quality parameters and structure. The problems of stability of the legal regulation system are highly relevant in view of the problems of poor quality of legislation, as well as conflicts in legal regulation and application of law, which are negative factors that reduce the effectiveness of the state's legal regulation system.

The stability of the legal regulation system should contribute to the establishment of law and order. The required stability of the legal regulation system is ensured by the existence of legal rules stabilizing the system.

The stability of legal regulation implemented by the legislator on the one hand and by the application of law on the other is ensured by the fact that they rely on common principles of legal regulation, proceed from common definitions, and allow for collisions object to common rules. This allows the system to retain the qualitative features that add consistency to all components of the system. The Constitutional Court of Ukraine believes that individuals rely on the stability and consistency of legal regulation, so frequent and unpredictable changes in legislation impede the effective exercise of their rights and freedoms, as well as undermine confidence in public authorities, their officials and employees [5].

If the Law on Regulations is to be drafted, it would be advisable for the legislator to include a chapter on "Requirements for Systemic Unity of Regulatory Legal Acts of Ukraine" therein.

The existence of any type of constitutional law is aimed at the normal and stable operation of the legal regulation system. In the system of legal regulation, we can distinguish rules that promote coordination between the other rules of law, provide organic unity, integrity, and ensure mutual compatibility. Their existence is intended to ensure stability and sustainability of the entire system of legal regulation. Consequently, each constitutional law provision that is adopted or implemented must be consistent with these provisions, which stabilize the system.

The system of legal regulation is stabilized by the relevant rules of constitutional law, i.e. principles, definitions, and conflict of laws. These rules promote compatibility of the elements of the legal regulation system, ensure the required completeness of legal regulation, sufficient to regulate important social relations, and legalize the development strategy.

A special role belongs to constitutional rules-principles. The stabilizing function of this type of rules in the system of legal regulation is that the constitutional law principle establishes the initial, basic principles of legal regulation of all aspects of society; the constitutional law definition delineates and identifies concepts that are important for all branches of law; the conflict-of-laws rules in constitutional law contribute to the resolution of contradictions that may arise in the system of legal regulation, and not only in the system of constitutional and legal regulation.

Theoretical and legal aspects of constitutional rules in the system of legal regulation

The fact that a legal regulation system features stability does not mean that it is rigid and not object to change. Rigidity is a sign of instability. Dynamism means that the legal regulation system is in constant motion, continuously changing its characteristics, losing some elements and gaining others. These transformations do not impair the stability; they are manifested in a change in the interaction patterns between the elements. The rules of the constitutional law that add dynamism to the system of legal regulation become rules of behavior; they constitute specific regulation.

In constitutional law, the method of legal regulation is changing, which affects the ratio of imperative and dispositive rules. The understanding of the essence of dispositive rules in constitutional law may vary. The interaction of rules that authorize, prohibit and oblige affects the type of legal regulation.

The transformation of social relations, the emergence of new relations covered by the object of legal regulation of constitutional law causes the emergence of new constitutional and legal rules and, conversely, leads to the abolition of outdated ones. None of these changes affects the integrity and stability of the legal regulation system of Ukraine.

A significant number of rules regulating specific relations within the framework of constitutional law requires a classification approach, which allows to see the specific features of each type of rule and to study their diversity. It is logical to take the main elements of the legal regulation system as the basis for classification of rules.

At the inter-sectoral level, the following are important elements of the legal regulation system: a single object of legal regulation, a single method of legal regulation, and a regulatory process.

The object, method and process of legal regulation in constitutional law constitute systemic elements of the unified objects, methods, type and process of legal regulation, which allows studying the specific features of the rules of constitutional law and considering their role in the legal regulation system.

It is impossible to study the rules of a particular regulation without studying its time-specific characteristics. The rules that add dynamism to the legal regulation system are differentiated into types in accordance with the specified elements of the legal regulation system.

The first element is the object of legal regulation. The rules of the constitutional law have their own specific object of legal regulation, which is part of the real world.

Groups of social relations regulated by different branches of law are closely interrelated and constitute elements of an objectively complex legal environment that can exist only under conditions of legal regulation.

The object of legal regulation of constitutional law is a systemic element of a single object of legal regulation. This gives grounds to conduct a study of the rules of constitutional law which are allocated to the object of legal regulation of constitutional law, and to see their role in the legal regulation system of Ukraine.

The peculiarity of the object of legal regulation of constitutional law is that it covers all spheres of society. The object of legal regulation of constitutional law may include groups of homogeneous relations, which are regulated by respective groups of legal provisions, i.e. legal institutions. Under the systemic approach, it is of particular importance to study the types of rules of the constitutional law depending on the object of legal regulation.

The next element of the system is the method of legal regulation. The method of legal regulation allows distinguishing between branches and seeing the interrelationships between them and, therefore, is an indispensable element of the legal regulation system. Thus, it is of particular importance to study such types of rules of constitutional law as imperative and dispositive ones, since the key criterion for their allocation is the method of legal regulation.

The manifestations of the method of legal regulation are prohibitions, obligations and authorizations, a different combination of which allows talking about the type of legal regulation. In the course of legal regulation, legal rules affect social relations through two types of legal regulation, i. e. general and permissive.

When describing the place of constitutional law in the system of legal regulation, one cannot ignore the subdivision of rules that authorize, prohibit and oblige. The constitutional law provisions have different time effects. Time-related indicators affect the effectiveness of legal regulation and the system of legal regulation.

A unified process of legal regulation is an important element of the system of legal regulation at the macro level. The system of legal regulation requires the adoption of legal rules that directly regulate social relations, i. e. substantive rules. However, without a mechanism for implementing the rules of law, substantive rules would be fictitious.

Any rule of law must be implemented and serve as a social regulator. There can be no rules, the existence could be considered as an end in itself, since the existence of the entire system of legal rules ensures the active influence of the system of law on social development.

According to E. V. Godovanyk, the current definitions of the concept of a rule of constitutional law of Ukraine do not take into account the causal approaches to the determination of legal phenomena [6, p. 82].

Therefore, it is required to regulate the process of implementation of the rules of constitutional law. For this purpose, procedural rules should be adopted. Compliance with all procedures for adoption of regulations provided for by law, including those advisory in nature, is mandatory for the adopted regulations to feature the property of legality and to be used for legal regulation [7, p. 210].

With regard to the role of constitutional and legal rules in the system of legal regulation, the analysis of substantive and procedural rules of constitutional law is of great importance.

Conclusions. The system of legal regulation in Ukraine is stable, dynamic, constantly changing and evolving. These characteristics of the system objectively led to the existence of two types of rules of constitutional law. The first type includes the rules of constitutional law that provide stability to the system of legal regulation. These are the rules of principles, definitions and conflict of laws, which are complex in nature, add stability to the system of legal regulation, and promote compatibility of the system elements.

The second type includes rules that ensure the dynamism of the legal regulation system. These are different types of regulatory rules of law that govern specific relations. Such rules of constitutional law require taking a classification approach, which allows to see the specific features of each type of rules and to study their diversity. The classification is based on the key elements of the system of legal regulation: object; method; type; process; and time-related indicators of legal regulation.

The rules of constitutional law help to maintain the stability of the legal regulation system and the existence of rules alongside them that add dynamism to the system, ensuring the ability of the system to adapt to the performance of various tasks and functions, increase resilience to external influences, and contribute to the flexibility of the legal regulation structure.

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ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ КОНСТИТУЦІЙНИХ НОРМ У СИСТЕМІ ПРАВОВОГО РЕГУЛЮВАННЯ

Висвітлено одну із актуальних теоретико-методологічних проблем правознавства щодо визначення ролі норм конституційного права у системі правового регулювання. Із застосуванням методу системного аналізу розглянуто правове регулювання, систему правового регулювання, механізм правового регулювання. Правове регулювання, тобто вплив на суспільні відносини за допомогою правових засобів, – одна із властивостей правової системи. Система правового регулювання є цілісною, водночас має властивості стабільності та динамізму. Стабілізуючу роль системи правового регулювання забезпечують відповідні норми конституційного права – норми-принципи, норми-дефініції, колізійні норми. Ці норми сприяють сумісності елементів системи правового регулювання, забезпечують необхідну повноту правового регулювання, достатню для регламентації важливих суспільних відносин, юридично оформляють стратегію розвитку. Наявність у системі правового регулювання стабільності не означає, що система є нерухомою, не схильна до змін. Динамізм означає, що система правового регулювання перебуває у русі, змінює характеристики, втрачає одні елементи та набуває інших. Такі перетворення не змінюють стабільності, а виявляються у зміні взаємодії між елементами. Норми конституційного права, що надають динамічності системі правового регулювання, становлять норми-правила поведінки; забезпечують конкретне регулювання. За основу класифікації цих норм взято основні елементи системи правового регулювання: єдиний предмет правового регулювання; єдиний метод правового регулювання; процес регулювання. Роль конституційно-правових норм у системі правового регулювання визначає аналіз матеріальних і процесуальних норм. Норми конституційного права сприяють збереженню стабільності системи правового регулювання, надають динамізму системі, забезпечуючи здатність системи адаптуватися до виконання різних завдань і функцій.

Ключові слова: конституційне право; правові норми; система правового регулювання; механізм правового регулювання; норми конституційного права.