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CONSTITUTIONAL JUSTICE AS A FACTOR OF FORMATION AND DEVELOPMENT OF UKRAINIAN CONSTITUTIONALISM

(Part 1)

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Abstract. Over the twenty-eight years of its existence, the Constitutional Court of Ukraine has attracted a lot of criticism from the authorities and society, largely due to the imperfection of the legislation governing its activities. Therefore, changes in the organization of work of this respected institution are extremely relevant today and are eagerly awaited by experts, politicians and the public. In accordance with Article 147 of the Constitution of Ukraine, the Constitutional Court of Ukraine decides on the compliance of laws. Article 1 of the Law of Ukraine “On the Constitutional Court of Ukraine” stipulates that the Constitutional Court of Ukraine is a constitutional jurisdiction body that ensures the supremacy of the Constitution of Ukraine, decides on the compliance of laws of Ukraine and, in cases provided for by the Constitution of Ukraine, other acts with the Constitution of Ukraine, officially interprets the Constitution of Ukraine, and has other powers in accordance with this Constitution.

It has been proved that in the case of Ukraine, it can be said that by certain parameters it exists. However, it is unlikely that the mass of constitutional consciousness of citizens, the population as a whole, its strata and, most importantly, the constitutional order as a process and state of implementation of constitutional norms have reached high standards of constitutionalism. on the way to the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023, the main plan of the Strategy for the Development of Constitutional Justice is to identify priorities for improving constitutional and legal regulation, primarily in the selection of judges of the Constitutional Court of Ukraine, ensuring their integrity, professionalism, and Ukraine.

The main problems that determine the need to improve the activities of the Constitutional Court of Ukraine are:

- the emergence of a mechanism for confirming the integrity of judges of the Constitutional Court of Ukraine, which makes it impossible to behave in bad faith, not to comply with the standards of professional ethics, and to tolerate corruption;
- imperfection of the procedures for competitive selection of candidates for the positions of judges of the Constitutional Court of Ukraine;
- functional imperfection of the constitutional justice system;
- has appropriate mechanisms for bringing judges of the Constitutional Court of Ukraine to disciplinary responsibility;
- demonstrates mechanisms for monitoring compliance of the courts of the Constitutional Court of Ukraine with anti-corruption restrictions and prohibitions;
- insufficient communication policy of the Constitutional Court of Ukraine;
- insufficient level of public trust in the constitutional jurisdiction body in Ukraine.

The transformations of constitutional regulation after Ukraine gained independence changed the paradigm of constitutional law understanding. It is based on the idea that constitutional regulation should ensure the growth of law over the state. It is impossible to equate law as an objectively existing substance with the law, which in turn can only reflect the subjectivity of the will of the state authorities.

Keywords: constitutional justice, constitutional control, constitutional justice, supremacy, public authorities, legal force, regulations, decisions.

Formulation of the problem. In today's world, we are witnessing an increasing influence of external and internal factors on the legal systems of countries, and this brings to the fore the issue of ensuring legal stability. The role of constitutional proceedings as a key mechanism for ensuring the integrity and stability of the legal space is attracting considerable attention. Modern states are facing difficulties related to economic, political and socio-cultural transformations that lead to instability of the legal environment. Growing challenges, including globalization, wars, terrorism and humanitarian crises, call into question the ability of traditional legal systems to ensure the sustainability and effectiveness of justice. Constitutional control, as an instrument of state and legal governance, has the potential to become a pillar of legal stability in the face of adverse changes. However, the question of the effectiveness and adaptability of constitutional control to new challenges remains open. Therefore, the question naturally arises whether understanding the role of constitutional control in the context of ensuring legal stability is an urgent task for legal theorists and practitioners, since the ability of the legal system to meet the challenges of our time and maintain its relevance in the long term depends on it.

Analysis of the study of the problem. It should be noted that a number of recent studies and publications in the field of constitutional justice emphasize its importance for ensuring legal stability. In particular, the works of prominent scholars such as V. B. Averyanov, V. D. Babkin, M. I. Kozyubra, A. M. Kolodii, M. V. Kostytskyi, V. V. Kopeychikov, N. R. Malysheva, O. Mironenko, E. Nazarenko, V. Opryshko, M. Orzikha, V. Pogorilko, P. Rabinovych, V. Selivanov, E. Tikhonov, O. F. Frytskyi, V. M. Shapoval and others highlight the evolution of the concepts and methods of constitutional control in the context of changes in the modern legal environment.

The purpose of the article. The place of the constitutional justice body in the mechanism of the State, and the peculiarities of legal regulation of its status, with the choice of a particular model of judicial constitutional control, as well as the relevant state and legal traditions.

Presenting main material. The development of Ukraine as a legal, social and democratic State integrated into the European and international community is impossible without addressing a set of issues related to the creation of an effective mechanism for the implementation and protection of the Constitution of Ukraine. The political and legal reforms that have already been carried out and are ongoing in Ukraine are associated with changes in the legal system of the state. Objectively belonging to the Romano-Germanic legal family, the legal system of Ukraine has absorbed the features inherent in the countries belonging to this family. One of these features is the functioning of the institution of constitutional justice. In Ukraine, it is represented by the only body of constitutional jurisdiction in the country – the Constitutional Court of Ukraine.

Twenty-eight years of experience of this institution in Ukraine gives grounds and prompts to analyze many problems of constitutional jurisdiction. Most of them are related to the place of the constitutional justice body in the mechanism of the State, the peculiarities of legal regulation of its status, the choice of a particular model of judicial constitutional control, and the relevant state and legal tradition.

The second important event in the formation and development of global constitutionalism, including Ukrainian constitutionalism, after the adoption of constitutions as the only legal acts of the highest force, is the establishment of specialized courts for the protection of constitutions – constitutional courts.

According to Article 21 of the Constitution, the Constitution as the fundamental law is a necessary feature of a modern state governed by the rule of law. However, society requires not only the Constitution, but also an effective and stable mechanism for its protection. Undoubtedly, the guarantor of constitutional provisions is the activity of all state bodies and officials, which is carried out by them by various legal means within the framework of acts of delegated competence. However, the main structural element in the system of constitutional protection is the Constitutional Court of Ukraine – the only body of constitutional jurisdiction in Ukraine, which is one of the highest constitutional bodies [1, p. 8-9].

There is still an ongoing debate on the essence of the Constitutional Court, its functions, structure, procedure of formation and renewal, nature and mechanism of execution of acts, place and role of the Constitutional Court in the system of the Constitution. state bodies. In particular, H. Murashyn, N. Vitruk, V. Ladichenko, O. Kordun consider the Constitutional Court to be a judicial body [2, p. 7].

It is no coincidence that Article 8 of the Constitution of Ukraine enshrines the exercise of justice by the Constitutional Court under the title “Justice”. The main social purpose of the Court is to ensure the protection and guidance of the Constitution, to be its guarantor, a legal court of law with regard to normative legal acts [3, p. 9].

These powers give true independence to the judicial branch. According to V. Ladichenko, the introduction of the so-called “controlling authority”, which replaces the judicial authority in resolving conflicts between the branches of power or bodies representing them, leads to a decrease in the authority of the court, as it reduces its functions to resolving conflicts only between citizens and their associations. Thus, the “controlling power” replaces the judiciary among the “equals among the first” [4, p. 4].

At the same time, the Constitutional Court differs significantly from other courts. It is not an element of the system of courts of general jurisdiction that consider disputes – issues of certain branches of international scientific and practical conference of law; it cannot be a cassation, appeal or supervisory instance for courts of general jurisdiction. The Constitutional Court does not consider cases in the ordinary course of justice in accordance with the requirements of the procedural codes, but according to the rules of constitutional justice in accordance with the Constitution, the Law “On the Constitutional Court of Ukraine” and the rules of the court's authorized representative [5, p. 49].

The main advantage of specialized constitutional jurisdiction is the rationalization of the procedure for investigating the circumstances of the case and making decisions.

The Constitutional Court resolves only constitutional and legal issues. This eliminates the need for it to simultaneously solve complex problems of other branches of law. During a specialized constitutional process, it is easier to make court decisions binding on all, which is important when the system of constitutional justice is introduced for the first time [6, p. 7].

V. Shapoval, Y. Shulzhenko, V. Chirkin, M. Kelman, M. Teslenko, V. Gergeliynyk propose not to include this court in the judiciary, but to refer it to a special branch of control, since the function of

constitutional control is primary for it [7, p. 10]. In support of his words, V. Gergeliinyk cites the following provisions: the main purpose of the constitutional jurisdiction body will be to ensure the supremacy of the Constitution in the entire legal space of the country; a specialized body of constitutional jurisdiction is the essence of the idea of a controlling power with all its necessary attributes; the activities of this body are controlled only by the Basic Law; the existence of the Constitutional Court improves the principle of separation of powers in the system of checks and balances [8, p. 19].

M. Kelman adds that constitutional control is a form of professional state control, the highest among the specialized forms of supervisory activity. This applies to both lawmaking and the application of laws by public authorities [9, p. 20].

This status places high demands on the judges of the Constitutional Court of Ukraine. The Constitutional Court of Ukraine will consist of eighteen judges who are appointed for a term of nine years without the right to be reappointed. A judge of the Constitutional Court of Ukraine may be a citizen of Ukraine who has reached the age of forty on the day of appointment, has a higher legal education and at least ten years of work experience, has resided in Ukraine for the last twenty years and speaks the national language. Judges of the Constitutional Court may not belong to political parties and trade unions, have a representative mandate, participate in any political activity, hold other paid positions, or perform other paid work, except for scientific, teaching and creative work.

An analysis of the functions of this body will help to determine the legal nature and nature of the Constitutional Court's activities. Unfortunately, both the Constitution of Ukraine (Articles 150, 151) and the Law on the Constitutional Court of Ukraine (Article 13) outline only priority functions. In particular, the powers of the Constitutional Court include making decisions in cases. They concern:

1) the constitutionality of laws and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea

2) compliance of the Constitution of Ukraine with the international treaties of Ukraine in force or those international treaties that are submitted to the Verkhovna Rada for consent to be bound by them;

3) observance of the constitutional procedure for investigation and consideration of the case of removal of the President of Ukraine from office by impeachment;

4) official interpretation of the Constitution and laws of Ukraine.

The grounds for the Constitutional Court's decision on the unlawfulness of regulatory legal acts in whole or in part are their inconsistency with the Constitution of Ukraine; violation of the procedure established by the Constitution of Ukraine for their consideration, adoption or entry into force; exceeding constitutional powers in their adoption [10].

Article 159 of the Constitution of Ukraine provides for a special group of powers of the Court related to amendments to the Basic Law. In particular, a draft law on any amendments is considered by the Parliament only if the Constitutional Court has issued an opinion on the compliance of the draft law with the requirements of Articles 157 and 158 of the Constitution. The mandatory nature of such consideration is confirmed by the decision of the Constitutional Court in case No. 1-26/98 of June 9, 1998 on the constitutional delivery to the President of Ukraine of the official interpretation of the provisions of the second part of Articles 158 and 159 of the Constitution of Ukraine [11, p. 175].

Paragraph 28 of Article 85 of the Constitution of Ukraine defines another power of the Constitutional Court – adoption of a conclusion on violation by the Verkhovna Rada of the Autonomous Republic of Crimea of the Constitution of Ukraine or laws of Ukraine for early termination of the powers of the said parliament. time [12, p. 15, p. 6–7].

Conclusion. Thus, the powers of the Constitutional Court of Ukraine allow us to speak of its plurality. It is both a constitutional justice body and a constitutional control body. As a body of constitutional justice, this institution applies the Basic Law to a legal act whose constitutionality is challenged. In addition, the court is an independent element of the judicial branch of power. Like the judiciary, it has the power to resolve disputes; it must meet the requirements for the judiciary (Ukrainian citizenship, legal

education, length of service, the principle of incompatibility) and guarantees of judicial independence; it has the same principles of operation and, even despite the peculiarities of constitutional proceedings, the procedure for conducting a hearing (presence of the presiding officer and participants, responsibility of the participant for violations, mechanism of submission of evidence, common grounds for postponement and continuation of the hearing, conducting a new investigation, similarity of the Even the name itself – the Constitutional Court – clarifies the place of the institution in question in the system of state bodies.

Constitutional control is exercised by the Court in the form of supervision over the compliance of legal acts and relevant international treaties with the Constitution of Ukraine; in the form of supervision over the observance of constitutional procedures (consideration, adoption and entry into force of legal acts, investigation and consideration of the case on removal of the President of Ukraine from office by impeachment); in the form of official interpretation of the Constitution of Ukraine and laws of Ukraine, as well as in the form of control over the compliance of draft laws amending the Basic Law with the provisions of Articles 157 and 158 of the Constitution of Ukraine.

In conclusion, the Constitutional Court plays the role of an independent arbitrator in the system of power. According to V. Gergeliinyk, the main task of the institution of the controlling power will be to fulfill the controlling role of the authorities [13, p. 7], primarily to restrain the legislative and executive branches of power.

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КОНСТИТУЦІЙНА СПРАВЕДЛИВІСТЬ ЯК ЧИННИК СТАНОВЛЕННЯ ТА РОЗВИТКУ УКРАЇНСЬКОГО КОНСТИТУЦІОНАЛІЗМУ

(частина 1)

Анотація. За двадцять вісім років своєї діяльності Конституційний Суд України викликав чимало критики з боку влади та суспільства, багато в чому через недосконалість законодавства,

яке регулює його діяльність. Тому зміни в організації роботи цієї поважної інституції сьогодні є надзвичайно актуальними і з нетерпінням очікуються експертами, політиками та громадськістю. Відповідно до статті 147 Конституції України питання про відповідність законів вирішує Конституційний Суд України. Україна та у випадках, передбачених цією Конституцією, іншими актами з Конституцією України, надає офіційне тлумачення Конституції України, а також інші повноваження відповідно до цієї Конституції. ст. 1 Закону України “Про Конституційний Суд України” визначено, що Конституційний Суд України є органом конституційної юрисдикції, який забезпечує верховенство Конституції України, вирішує питання про відповідність законів України та у передбачених випадках Конституцією України, іншими актами з Конституцією України, офіційно тлумачить Конституцію України та здійснює інші повноваження відповідно до Конституції України.

Доведено, що щодо України можна сказати, що за певними параметрами вона є. Але навряд чи маса конституційної свідомості громадян, населення в цілому, його прошарків і, головне, конституційний лад як процес і стан реалізації конституційних норм досягли високих зразків конституціоналізму. на шляху до Стратегії розвитку системи правосуддя та конституційного судочинства на 2021–2023 роки основним планом Стратегії розвитку конституційного судочинства є визначення пріоритетів удосконалення конституційно-правового регулювання, насамперед у питання добору суддів Конституційного Суду України, забезпечення їх доброчесності, професійної компетентності та політичної переваги. прозорі підстави та ефективні механізми притягнення суддів до відповідальності, забезпечення прийняття Конституційним Судом України обґрунтованих рішень і висновків, які базуються на принципах верховенства, пріоритету прав і свобод людини, цінностях і засадах, визначених Конституцією України. Україна.

Основними проблемами, які визначають необхідність удосконалення діяльності Конституційного Суду України, є:

- поява механізму підтвердження доброчесності суддів Конституційного Суду України, що унеможливує несумлінну поведінку, не- дотримання стандартів професійної етики, толерантність до корупції;
- недосконалість процедур конкурсного відбору кандидатів на посади. судді Конституційного Суду України;
- функціональна недосконалість системи конституційного судочинства;
- має належні механізми притягнення суддів Конституційного Суду України до дисциплінарної відповідальності;
- демонструє механізми контролю за дотриманням судами Конституційного Суду України антикорупційних обмежень і заборон;
- недостатня комунікаційна політика Конституційного Суду України;
- недостатній рівень довіри суспільства до органу конституційної юрисдикції в Україні.

Трансформації конституційного регулювання після здобуття Україною незалежності змінили парадигму конституційного праворозуміння. В її основу покладено ідею про те, що конституційне регулювання має забезпечувати збільшення права над державою. Не можна ототожнювати право як об’єктивно існуючу субстанцію з законом, який у свою чергу може лише відображати суб’єктивність волі державної влади.

Ключові слова: конституційне судочинство; конституційний контроль; конституційне правосуддя; верховенство; органи державної влади; юридична сила; нормативні акти; рішення.