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CONSTITUTIONAL JUDICIAL PROCESS IN THE SYSTEM OF LEGAL PROCESS: THEORETICAL BASIS

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SUMMARY

The article is devoted to issues related to the definition of the place and role of the constitutional court process in the legal process.

Based on an analytical study of the philosophical and legal concepts developed by domestic and foreign experts in the field of procedural law, the author defines the general and specific features of the constitutional court process as part of the overall legal process.

Key words: constitutional court process, legal traditions, principles of legal proceedings, member in constitutional proceedings, legal process.

КОНСТИТУЦИОННЫЙ СУДЕБНЫЙ ПРОЦЕСС В СИСТЕМЕ ЮРИДИЧЕСКОГО ПРОЦЕССА: ТЕОРЕТИЧЕСКИЕ ОСНОВЫ

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АННОТАЦИЯ

Статья посвящена вопросам, связанным с определением места и роли конституционного судебного процесса в юридическом (правовом) процессе.

На основе аналитического исследования философско-правовых концепций, разработанных отечественными и зарубежными экспертами в области процессуального права, автор определяет общие и специфические особенности конституционного судебного процесса как части общего правового процесса.

Ключевые слова: конституционный судебный процесс, правовые традиции, принципы судопроизводства, участник конституционного судопроизводства, судебный процесс.

Relevance of the topic and its scientific substantiation. In the legal literature, problems related to the functioning of the institutes of constitutional judicial control, were investigated by domestic scientists, in particular: O.O. Bandur, Yu.V. Baulin, V.F. Boyko, V.D. Brintsev, Yu.M. Groshevy, N.L. Drozdovich, A.Ya. Dubinsky, V.M. Kampo, N.I. Klymenko, A.F. Koni, V.O. Konovalova, M.V. Kostitsky, N.V. Kosticka-Kusakova, V.T. Malyarenko, O.M. Myronenko, M.M. Mihieenko, M.P. Pogoretsky, V.F. Pogorilko, B.M. Poshvy, P.M. Rabinovich, V.V. Rechitskiy A.O. Selivanov, M.I. Siriy, A.A. Strizhak, V.M. Shapoval, V.Yu. Shepitko and many others.

However, despite a large number of publications and scientific works, certain topical issues, in particular, on the place and role of the constitutional court process in the legal process, are still poorly researched, which to a certain extent results in conflicts and signs of legal uncertainty in legislative requirements, especially procedural, which regulates the activities of constitutional jurisdiction as an important element of the national mechanism for the protection of the rights and fundamental freedoms of the individual.

The theoretical basis of the research is the work of domestic and foreign scholars in the fields of philosophy and constitutional law and universally recognized acts of international law, as well as acts of domestic legislation.

The purpose and tasks of the study. The aim of the work is to devise a system of measures for:

- philosophical and legal definition of the place and role of the constitutional court process in the general system of legal process;
- revealing of general principles and differences of functional specifics of activity of various systems (models) of judicial constitutional control and their influence on the paradigm of regulation of social relations in the basic spheres of social activity of society.

Presentation of the main material. "The legal (judicial) process, − said President of the University of California, USA, J.U. Paltason, − is a set of legally defined and interrelated procedures for resolving disputes between the parties (parties) of this process, authorized by that person or authority, whose decisions are binding". Legal (litigation) is both a means of resolving disputes and the formation of state policy in the relevant branches of law [1, p. 27].

The fundamental legal position of the supporters of what is now called the "law school" of American jurisprudence, says University professor of law and political science E. Rubin, is that the US legal system is generally understood as a decision-making procedure, and only in the second place, as a collection acts regulating the principles of a particular substantive law. That is, the entire system of American law is ultimately due to the structural features of the federal constitution [2].

The fundamental distinction of the continental legal tradition from the generally accepted Anglo-American legal family of the concept of law, says Jean-Louis Cunibert, Professor of Private International Law at the University

of Luxembourg, is that continental lawyers apply their own scientific approach to law. They define the system of legislation with a set of pragmatic responses to various social problems, based in particular on the fact that the scientific approach to legislative action is the most important legacy of Roman law [3].

In the domestic legal science, the notion of "legal process" is also interpreted ambiguously. Thus, according to S. Likhova, the legal process, in its broad sense, is "a complex and multifaceted concept that characterizes the totality of all legal forms of activity of state bodies (parliament, president, government, judicial authorities, prosecutor's office) and other authorized entities, who commit legally significant actions that have legal consequences in the manner prescribed by law. Among the principles of the legal process are justice, equality and unity of rights and responsibilities, mutual responsibility of the state and individuals, humanism, democracy, and legality. The content, forms and procedure for the implementation of the legal process are established and regulated by the rules of material and procedural law, and its results are recorded in specific legal acts of general legal or individual character (laws, by-laws, orders, decisions, orders, etc.)" [4, p. 104].

According to V. Gorshionov, "the legal process is the procedure for the activity of competent state bodies regulated by the procedural rules, which consists in the preparation, adoption and documentary consolidation of legal decisions of general or individual character" [5, p. 45].

"The legislative process, − writes O. Skakun, − as a legal concept should be distinguished from lawmaking, as a general social phenomenon". The legislative process, like any legal process, has two meanings:

- firstly, this is the order of activity aimed at creating the law;

- secondly, it is the legislative activity itself.

Legislation − a broader concept: it is not limited to the actual creation of laws, but also covers the activities related to the creation of the law, and the assessment of its effectiveness, and possible further adjustment (change, additions). Formation of a legal motive (state will) about the need to regulate the legal norms of a particular group, kind or type of social relations as a result of the analysis of the actual state of politics, Economy, social sphere − this stage, rather, lawmaking than the legislative process. Bodies, organizations, persons engaged in identifying the needs for legislative regulation, may not always be parties to legal relationships that constitute the legal process. Yes, and the legislative process takes place in forms strictly established by laws or parliamentary regulations, while the need for a lawmaking is established in various ways used in the legal, political, sociological and other sciences [6, p. 317−318].

According to A. Kryzhanovsky, "legal activity is inherent in a certain order, which should, and in most cases, be, optimal for the implementation of those or other legally significant actions. It is established by the relevant regulatory requirements. This procedure contains a program of legal activity, it is important for the purpose of achieving the legal goal, they ensure the legality, efficiency and effectiveness of legal regulation. Normatively established forms of streamlining of legal activities that form the legal process". In this case, "the legal process should be considered as a consistent change in some legal phenomena, states that arise in the legal life of society as a result of legally significant actions committed by carriers of state power, citizens and legal persons. Movement itself, the change of legal phenomena in legal life occurs as a result of the mechanism of legal regulation of social relations. In legal practice, the process means the procedure for carrying out investigations, administrative, judicial bodies' activities. "Close to the notion of legal process is the term "procedure" − the formal procedure for action in the framework of individual stages or elements of the process (procedure for filing an application, the procedure for making a decision, etc.) [7, p. 207].

"It should be noted," − L. Kasyanenko rightly remarks, "that in the studies of lawyers there is still no single opinion on the relation between the concepts of" process", "procedure", and this has a negative impact. In our opinion, the concept of "process" is more voluminous, and part of the process, which has an independent value for any legal relationship, corresponds to the understanding of the procedure. Not necessarily the procedure needs to grow into the process. Controversial legal relationships can be completed within the first stage − procedural, if the desired result does not require the use of the whole arsenal of means" [8, p. 55].

"Despite the sharp discrepancies, − said professor of the University of California, U.S. F. Frickey, − lawyers have reached a wonderful consensus on the main ideas of the legal process", namely:

- firstly, it concerns the definition of law as a policy and institutional competence on the basis of the principle of democratic openness;

- secondly, as the main factor of state legitimacy, which received widespread intellectual recognition [9]?

Although the issues related to the peculiarities of the constitutional court process are much less researched in comparison with other lawsuits, in modern legal science there are several points of view regarding the understanding of the constitutional process, the basis of which, according to O. Riabchenko, it is advisable to systematize in such three groups:

a) historical;

b) political;

c) legal.

At the same time, she rightly observes that "the allocation of these groups is mostly conditional, because historical development is directly related to the formation of the political environment, which leads to the need for normative consolidation of the most stable, stable tendencies of social life" [10, p. 385].

Thus, well-known domestic experts in the field of constitutional law define the constitutional court process as a consistent activity of the relevant state bodies in the exercise of their competence in resolving the issue of compliance with the normative legal acts of the Constitution of Ukraine and the implementation of a formal interpretation of the Constitution and laws of Ukraine [11, p. 317].

According to M.Savchin, "constitutional justice can be considered in two ways: in the broad sense, as a constitutional process, and in a narrow one − as one of the varieties of the constitutional process. Since the issues of the constitutional process are the procedure for amending the Constitution, the adoption of laws, and the President's impeachment, the most likely will be the second point of view. Therefore, it is wrong to identify the constitutional proceeding with the constitutional process, since the Law on the Constitutional

Court defines eight types of constitutional proceeding and the resolution of constitutional disputes cannot be associated with the proceeding, taking into account at least the principle of dispositiveness of the constitutional justice" [12, p. 865].

According to N. Greshnova, the constitutional trial is:

1) the procedure for consideration of cases referred to the competence of bodies of constitutional justice;

2) the type of legal activity of subjects of constitutional justice;

3) a set of procedural rules that establish the procedure for the implementation of constitutional justice.

She also argues that this very understanding of this process makes it possible to ascertain the actual existence of constitutional procedural law as a new field of law [13, p. 37].

At the same time, academic circles often point out that the constitutional court process, as one of the varieties of the jurisdictional process, is characterized by features that are also inherent in administrative, civil, economic, and criminal court proceedings. In particular, such signs include those that, according to the law:

- relevant cases are considered only by the body of constitutional jurisdiction;

- the activities of this quasi-judicial body are carried out in accordance with the Constitution and laws of jurisdiction;

- granting him the right to examine a case and make a competent decision;

- determination of the circle of individuals and legal entities that may be parties to the trial;

- definition of representatives of parties who have an opportunity to represent their interests in court;

- judges carrying out legal proceedings are independent and subject only to the Constitution and laws of Ukraine and have the necessary guarantees of immunity (immunity);

- the proceeding is carried out in accordance with the basic principles of judicial proceedings: the rule of law, legality, equality of participants, adversity, transparency, full and comprehensive consideration of the case, reasonableness and binding nature of the decision, etc.;

- documents, evidence of parties and witnesses, conclusions of examination are used as evidence in the process of legal proceedings;

- the essence of the trial is to prove (proof) the legal position of the parties and other participants in the process [14, s. 77].

In addition, it is noted that the constitutional court process also has other characteristic features of the legal process, namely: the sequence of stages, legislative consolidation, the presence of a state body among the subjects, etc.

In our view, these statements can only be accepted in part. Indeed, constitutional court proceedings are a kind of legal process, but:

- firstly, the list of issues, the resolution of which falls within the powers of the Constitutional Court of Ukraine (hereinafter − the CCU, the Court) (jurisdiction), in an exclusive form, defines Art. 152 of the Constitution of Ukraine, as noted in this context by the Court in the Decision No. 13-rp of June 26, 2008, their change may be carried out "only by amending the Basic Law" [15]. Consequently, laws cannot determine the jurisdiction of the CCU, but only, for example, Art. 7 of the current Law of Ukraine "On the Constitutional Court of Ukraine" (hereinafter referred to as the Law on the Constitutional Court), the content of Art. 152 of the Fundamental Law of Ukraine;

- second, the thesis of "determining the representatives of the parties who have the opportunity to represent their interests in court" is seen as fundamentally inappropriate in relation to the constitutional court process.

Not by chance in art. 70 of the CCU Law do not refer to "parties" but to "parties to the constitutional proceeding", which include, in particular:

– the subject of the right to a constitutional petition, appeal or complaint;

– a body or official who has adopted an act that is subject to review by the Court;

– the bodies and officials, witnesses, experts, specialists, translators and other persons involved in the proceedings involved in the trial, which are necessary to ensure an objective and complete consideration of the case (Part 1).

The constitutional proceeding is not competitive, the participants do not defend their interests, and, in case of the recognition of the necessity of this Court, provide explanations on matters of importance for the complete and objective consideration of the case and the adoption of a reasoned decision, not in favour of so-called "parties", but based on the principle of the rule of law and observance of constitutional legality.

Conclusions.

1. Among the principles of the legal process are justice, equality and unity of rights and responsibilities, mutual responsibility of the state and individuals, humanism, democracy, and legality. The content, forms and procedure for the implementation of the legal process are established and regulated by the rules of material and procedural law, and its results are recorded in specific legal acts of a general legal or individual nature (laws, by-laws, orders, decisions, orders, etc.).

2. The constitutional court proceeding is a consistent activity of the relevant state body for the implementation of issues, the resolution of which falls within its competence.

3. The constitutional court process has the characteristic features of the legal process, namely: the sequence of stages, legislative consolidation, binding decisions, etc.

4. The constitutional court proceeding is not competitive, its participants do not defend their interests, and, in case of recognition of this CCU necessary, provide explanations on matters that are relevant for the full and objective consideration of the case and the adoption of a reasoned decision, not in favour of such called "parties", but based on the principle of rule of law and observance of constitutional legality.

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ГЕНЕЗИС СОТРУДНИЧЕСТВА ГОСУДАРСТВ ПО ОХРАНЕ ТОРГОВОЙ МАРКИ В МЕЖДУНАРОДНОМ ПРАВЕ

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АННОТАЦИЯ

Статья посвящена правовому анализу особенностей и новел в международно-правовых актах, посредством которых осуществляется правовое регулирование отношений в сфере охраны торговой марки. Целью статьи является исследование эволюции международно-правового сотрудничества в соответствующей сфере, а также результатов такого сотрудничества, в частности международно-правовых договоров и их влияния на развитие правовой регламентации охраны ТМ в международном праве. Определяются основные тенденции правового регулирования свободного функционирования торговых марок за пределами национальной юрисдикции отдельных государств, а также специфика развития наднациональных норм в этой области. Для достижения поставленной цели основное внимание уделено комплексному изучению и установлению особенностей существующих международно-правовых договорных рамок, в пределах которых государства выполняют свои обязательства, возникающие в сфере охраны интеллектуальной собственности, в частности охраны прав физических и юридических лиц на торговые марки.

Ключевые слова: торговая марка, международное сотрудничество, международные договоры, правовая охрана торговой марки, генезис международно-правового обеспечения охраны торговой марки.

THE GENESIS OF THE STATES COOPERATION IN THE TRADEMARK PROTECTION FIELD IN THE INTERNATIONAL LAW

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SUMMARY

The article is devoted to the legal analysis of international legal acts peculiarities and innovations, by means of which legal regulation in the field of trademark protection is carried out. The aim of the article is to study the evolution of international legal cooperation in the relevant field, as well as the results of such cooperation, in particular international legal treaties and their impact on the development of legal regulation of TM protection in international law sphere. It identifies the main trends in the legal regulation of the trademarks free functioning outside the national jurisdiction of individual states, as well as the specifics of the supranational norms development in this field. To achieve this goal, the main attention is paid to the comprehensive study and establishment of the existing international legal contractual framework features, within which states fulfill their obligations in the field of intellectual property rights protection, in particular, the protection of individuals and legal entities trademarks rights.

Key words: trademark, international cooperation, international treaties, legal protection of a trademark, the genesis of international legal support of trademark protection.

Постановка проблемы. Наличие четкой, направленной на евроинтеграцию политики нашего государства, среди прочего, ставит перед Украиной требования по адаптации национального законодательства к законодательству ЕС. Так, необходимым условием вхождения Украины в европейское правовое пространство является процесс имплементации Соглашения об ассоциации между Украиной, с одной стороны, и Европейским Союзом, Европейским сообществом по атомной энергии и их государствами-чле-