

CHAPTER 1

MODERN TRENDS IN PUBLIC ADMINISTRATION

THE FUNCTIONING OF THE CONSTITUTIONAL COURT OF UKRAINE AS THE PART OF IMPROVING THE MECHANISMS OF PUBLIC ADMINISTRATION AND SUSTAINABLE DEVELOPMENT OF THE STATE

Ivan Petriv¹

¹Researcher, Odessa Regional Institute for Public Administration of the National Academy for Public Administration under the President of Ukraine, Odesa, Ukraine, e-mail: depr1423@gmail.com

Abstract. *The material of the article reveals the purpose of research in the field of sustainable functioning of the mechanism of state power through the lens of the activity of the body of constitutional justice. The main results of the research are the disclosure of the content of the activities of the Constitutional Court of Ukraine as a necessary condition for ensuring a constitutionally defined system of public authorities and improving the mechanisms of public administration. The article describes the main functional characteristics of the body of constitutional justice in Ukraine and their influence on the sustainability of the work of the state bodies in terms of division into branches of power. In the process of research the importance of constitutional justice for the construction of a legal, democratic state with authoritative institutions was highlighted, the content of the activity of the body of constitutional justice and the feasibility of widespread use of the possibilities of the Constitutional Court of Ukraine as a state body with special status were revealed. It is proposed to improve the functions and powers of the Constitutional Court of Ukraine in view of the comparative characteristics of the bodies of constitutional justice of individual European states. The scientific work substantiates the necessity of reviewing the legislatively defined powers of the Constitutional Court of Ukraine in terms of their extension and adaptation to modern challenges, investigates the significance of the decisions and conclusions of this body for improving the mechanisms of public administration, determined the role of the Court in the system of higher bodies of state power by the status of a state body. Based on the definition of strategic goals set by the Constitution of Ukraine on the Constitutional Court of Ukraine, the directions for improving the effectiveness of the application of decisions and conclusions of the Court, interaction with higher bodies of state power are justified, the directions of improvement of the mechanisms of public administration through the prism of the results of the Court's activity are proposed. Directions of improvement of the legislation with the purpose of increase of the efficiency of the Constitutional Court of Ukraine in the mechanism of realization of the state power are offered.*

Keywords: *the Constitutional Court of Ukraine, constitutional justice mechanisms of public administration, system of state power, constitutional guarantees, functions of constitutional justice, constitutional control.*

JEL Classification: H10, H79, K10, K40

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Introduction. The functioning of the constitutionally defined mechanism of state power is under constant pressure from various phenomena of social and political life, economic, social and so on. At the same time, the sustainability and efficiency of the functioning of public authorities is the result of the maturity of statehood. In the states of the "young democracy", the body of constitutional justice plays a

particularly important role in the period of statehood, institutional certainty, and stability of public administration mechanisms. Its activities are designed to bring stability, certainty, uniformity and synergy to the work of public authorities. Particularly striking the role of the body of constitutional justice manifested during political crisis or exacerbation.

The main condition for the sustainable development of public administration mechanisms is the resolution of current conflict situations that arise in the process of interaction of public authorities, namely: ensuring political stability and legal certainty. In other words, such situations include: the vagueness (inconsistency of decisions made by the public authority with the fundamental law) and the poor quality of decisions (decisions that duplicate or contradict each other and do not contribute to the effectiveness of the functioning of the public administration mechanism).

Literature Review. The research found that most current researchers (Ivanovska A., 2015; Kopylenko O., Baimuratov M. & Gryshova I., 2018; Martyniuk R., 2017) define the political and legal stability of public administration as a necessary condition for building social and economic developed state.

Therefore, we propose to consider the importance of the Constitutional Court of Ukraine as a supreme state body with a special status in the following aspects: ensuring the formation of effective mechanisms of public administration that function effectively in terms of achieving socio-economic results; improvement of the normative-legal regulation of the activity of the Constitutional Court of Ukraine in order to increase the efficiency of this body in the system of public authorities; carrying out regulatory regulation of the state-administrative processes in the country as a means of limiting the destructive and crisis manifestations of the mechanisms of public administration.

Aims. The purpose of the article is to improve the mechanisms of public administration and sustainable development of the state through the functioning of the constitutional court of Ukraine.

Methods. The methodological basis of the research in the analysis of the essence and significance of the Constitutional Court of Ukraine as a supreme state body with a special status, the influence of its functioning on the development of public administration mechanisms was made up of the use of dialectic and system-structural methods. The application of the historical-logical method, induction and deduction allowed to explore the basics of improving the mechanisms for exercising state power. Factor and retrospective analysis was used to identify key problems and prospects for the development of public administration mechanisms through the prism of the activities of the Constitutional Court of Ukraine. When substantiating the strategic directions for improving the public administration mechanisms in Ukraine, the heuristic methods were used, as well as the logical generalization methods. The empirical basis for the research was the legal acts regulating the activity of the Constitutional Court of Ukraine and the basic principles of organization of state power in Ukraine.

Results. It should be noted that the last decades in Ukraine have been marked by a number of reforms and transformations. Including the formation of constitutional justice bodies as a prerequisite for building a rule of law. Being newly formed and based only on the experience of such bodies in other states, the bodies of constitutional justice have not avoided errors and shortcomings in their activities. However, characterizing in general the activities of constitutional justice bodies in the “young democracy” states, can talk about their positive influence on the formation of the rule of law and civil society, an effective mechanism of public administration, and on the observance and implementation of the constitutionally enshrined principles of the rule of law and the priority of the rights and freedoms of man and citizen. And the experience gained over the years only adds weight to their decisions and conclusions.

The results of the research of the views of scientists on the nature and status of the body of constitutional justice made it possible to determine that the possibility of the influence of this body, as a body of constitutional control, on the activities of parliament, government and the president testify to its special role in the mechanism of state power. At the same time, the relative independence and legal independence of the Constitutional Court of Ukraine in the mechanism of state power, its accountability to other bodies of state power is conditional and is in the "system of checks and balances."

It should be noted that the classical system of mechanism of checks and balances does not imply the presence of a fourth branch of power - control. However, it would be appropriate to make an argument of a historical nature, which consisted in the fact that during the birth of the theory of separation of powers, there was no idea of constitutional control as a necessary element of the mechanism of state power. The principle of division of power is developing only in terms of dynamic equilibrium, which is in granting each branch of power its own competence independent of one another and autonomy of legal status in the exercise of its own powers. Therefore, in view of the competence of the Constitutional Court of Ukraine, there are no reasonable grounds to assign it to one of the branches. It is considered appropriate to assume that the Constitutional Court of Ukraine is a supreme state body with a special status.

It is necessary to note the importance of the role of the Constitutional Court of Ukraine in the mechanism of state power, which is essentially determined directly by the characteristics of the basic law of the state. Due to the peculiarities and legal characteristics of the acts issued by the Constitutional Court of Ukraine, this body exerts considerable influence on state-power relations and in some cases imposes a political imprint on public relations.

In addition, the special role of the Constitutional Court of Ukraine lies in the legal characteristics of the acts adopted by it. Since this body is the only body of constitutional control, its decisions are based primarily on the Constitution, and accordingly, even those positions which do not come directly from the Basic Law, but are the result of the interpretation of the principles of the rule of law or others, carry legal characteristics at the level of the constitution.

This is extremely important for the functioning of the mechanism of state power, since specific historical, socio-political, economic conditions, worldviews of decision-makers can make significant adjustments to the "purely constitutional nature" of decisions and conclusions that are essentially have duties of character to fulfill. In carrying out its activities, the Constitutional Court of Ukraine makes decisions and conclusions that directly affect to the law enforcement and indirectly make adjustments to the activities of the legislative body. Thus, the ultimate impact of such a decision is reflected in the activities of each of the public authorities, and therefore, relations are arranged in the mechanisms of public administration.

It is also important to note and direct impact on the mechanism of the state power in the exercise of the arbitration function by the Constitutional Court of Ukraine in resolving conflicts or potentially conflicting situations between higher bodies of state power. In such situations, constitutional justice resolves disputes related to the division of powers, or decides the constitutionality of a decision taken by a separate body, if it influences or affects the interests of another public authority.

In pursuing any line of business, the Constitutional Court of Ukraine faces a number of problems. The most important of these are the gaps in law and the lack of adequate normative legal regulation of public relations in Ukraine.

Researching activities of the Constitutional Court of Ukraine, it must be acknowledged that its activities would be deprived of content if it were not legally enshrined in the obligation to enforce the rulings. Exactly the result of the activity in the form of a decision is a reflection of the exercise of constitutional justice by certain functions through the lens of statutory authority.

Indeed, a recourse to the analysis of the legislation confirms the exceptional validity of the decisions of the constitutional justice bodies and the obligation to enforce them. Thus, in Art. 151-2 of the Constitution of Ukraine it is determined that the decisions and conclusions adopted by the Constitutional Court of Ukraine are binding, final and cannot be appealed. And in the Law of Ukraine "On the Constitutional Court of Ukraine" states that the decisions and conclusions of the Constitutional Court of Ukraine are equally binding. In particular, a separate chapter 14 of the same Law regulates the implementation of decisions and conclusions of the Constitutional Court of Ukraine. If necessary, the Constitutional Court of Ukraine may determine in its decision, the conclusion the procedure and terms of their implementation, as well as impose on the relevant state bodies the responsibility for ensuring the enforcement of the decision and the observance of the conclusion. The Constitutional Court of Ukraine shall have the right to request from the bodies referred to in this Article a written confirmation of the execution of the decision and the compliance with the opinion of the Constitutional Court of Ukraine. Failure decisions and noncompliance findings of the Constitutional Court of Ukraine entail liability in accordance with the law.

It should be noted that the decisions taken by the Constitutional Court of Ukraine cannot be considered separately from the processes that take place in society and the state, since they have a significant impact on legislative regulation, human rights and the functioning of the legal system as a whole. In this regard, it is

necessary to determine to what extent the Constitutional Court of Ukraine by its decisions may influence the mechanisms of public administration, and whether its decisions can make "adjustments" to the functioning of the system of state power in general.

Exploring the essence of solutions of the Constitutional Court of Ukraine should pay attention to the fact that they have a normative and legal nature, affect the most important social relations, targeted at all participants in the legal relationship, have a binding and final character. The established decisions of the Constitutional Court of Ukraine are binding for all law enforcement agencies and state authorities to apply in the exercise of their powers. In addition, the decisions of the Constitutional Court of Ukraine have a significant influence on the formation of legal doctrine. As rightly notes M.P. Orzikh "... the prescriptions and practices of the Constitutional Court of Ukraine, the content of individual opinions of judges give reason to consider the doctrine as a source of law, the role of which for the Constitutional Court of Ukraine will grow only to determine it as a court of doctrinal law" (Orzikh M. (2011).

Owing to the powers conferred on it and the granting of decisions of the Constitutional Court of Ukraine with particular legal force, it is possible to speak about the real possibility of the Court to influence the functioning of the public administration system and the mechanism of state power as a whole by making decisions that can be further used in the exercise of their powers by the state authorities.

Making decisions here is a danger that the Constitutional Court of Ukraine will go beyond interpretation, which is present because there is a considerable amount of evaluation concepts in constitutional and current legislation and because of the imperfection of legal terminology, which provokes the Court to "adjust" the meaning of the rule by interpreting it. In this case, violation of the Constitution of Ukraine becomes especially probable, since the interpretation may be based on non-legal criteria.

Scientists pay particular attention to the problem of politicization of the decisions of the Constitutional Court of Ukraine and, thus, influence on the existing legal system of political factors. This issue is updated due to the fact that a large part of the cases considered by the Constitutional Court of Ukraine has political in nature.

Considerable public attention appealed to one of the decisions of the Constitutional Court of Ukraine, namely the decision of January 25, 2012 No. 3-rp / 2012, which interpreted the norms of the Constitution of Ukraine regarding the application by the courts of Ukraine of normative-legal acts of the Cabinet of Ministers of Ukraine and regulating by these acts the procedure and amounts of social payments and assistance financed at the expense of the State Budget of Ukraine, in accordance with the Constitution and laws of Ukraine. One of the issues to be considered by the Court was the issue of the mandatory application by the courts of Ukraine of normative-legal acts of the Cabinet of Ministers of Ukraine on issues of social protection of citizens issued in compliance with the requirements of the Budget Code of Ukraine, the Law on the State Budget of Ukraine for the respective year and other laws of Ukraine.

In essence, the Constitutional Court of Ukraine answered this question affirmatively, confirming that the Cabinet of Ministers of Ukraine regulates the procedure and amounts of social payments and benefits financed by the State Budget of Ukraine in accordance with the Constitution and laws of Ukraine. This decision caused considerable resonance in the society and became the basis for the discussion on the possibility of limiting by-laws, issued by the Cabinet of Ministers of Ukraine, enshrined in the Constitution and the laws of mandatory social payments.

The question became debatable on granting the Cabinet of Ministers of Ukraine the power to issue by-laws in order to regulate such relations of social security, based on the decisions of the Constitutional Court of Ukraine and on the socio-economic opportunities of the state. This is due to the fact that these social relations should be governed only by the laws, as stated in Art. 92 of the Constitution of Ukraine, in particular, in paragraph 6 it stipulates regulation solely by the laws of social and pension security.

Therefore, the decisions of the body of constitutional justice are intended, first of all, to resolve the question of the conformity of the Constitution with a certain normative act and to introduce legal uniformity in the application of certain provisions of the Basic Law, but they cannot be used as a legal instrument in solving particular political problems.

The impact of the decisions of the Constitutional Court of Ukraine on the legal system established in the state is obvious. In its decisions, the Constitutional Court of Ukraine must guarantee the supremacy of the Constitution of Ukraine; ensure the constitutional legality and stability of the functioning of the legal system on the basis of the principle of the rule of law, which excludes the possibility to influence any decision of the Constitutional Court of Ukraine of any non-legal factors.

Based on the above, it is worth noting that one of the problematic aspects in the practical implementation of the powers of the Constitutional Court of Ukraine is the problem of implementation of its decisions, without which it is difficult to speak of effective guarantee of the supremacy of the Constitution of Ukraine. Moreover, it is necessary to speak not only about the obligation to comply with the resolution part of the Constitutional Court's decision, but also about compliance with the basic principles laid down in the text of the Constitutional Court's decision. The above problematic issues is the result of the low level of legal accountability, legal culture and legal consciousness of the persons to whom the decisions of the Constitutional Court of Ukraine are addressed.

As noted above, the Constitutional Court of Ukraine may determine in its decision the procedure and terms of execution of the decision and oblige the relevant authorities to comply with the decision. The Constitutional Court of Ukraine itself interprets the provisions of the Law of Ukraine "On the Constitutional Court of Ukraine" regarding the execution of the decisions of the Constitutional Court of Ukraine in the decision of December 14, 2000, so that the decision of the Constitutional Court of Ukraine, irrespective of the order and terms of their implementation or not, is compulsory for implementation throughout Ukraine. State authorities, bodies of the Autonomous Republic of Crimea, bodies of local self-

government, enterprises, institutions, organizations, officials and officials, citizens and their associations, foreigners, stateless persons should refrain from applying or using legal acts or their provisions declared unconstitutional.

The decisions of the Constitutional Court of Ukraine have direct effect and do not require confirmation by any state authority to enter into force. The obligation to execute a judgment of the Constitutional Court of Ukraine is a requirement of the Constitution of Ukraine Part Two of Article 150), which has the highest legal force with respect to all other regulations (Part Two of Article 8).

In view of the actual state of implementation of the decisions of the Constitutional Court of Ukraine and its contemplative position on exercising control over the implementation of its acts, despite the frequent cases of ignoring decisions by the entities to whom these decisions are addressed, one should agree with the thesis that to achieve the effectiveness of each Court's decision has so far failed for reasons beyond the control of the Constitutional Court and beyond its powers.

Therefore, it seems that one of the necessary steps in this direction is a strict legislative regulation of the procedure and terms of execution of decisions and conclusions of the Constitutional Court of Ukraine. In this regard, the experience of some neighboring countries with similar issues of state and political life seems positive.

For example, the issue of implementation of the decisions of the Constitutional Justice body in the legislation of the Republic of Belarus is regulated in a detailed form. So, in Art. 85 of the Law of the Republic of Belarus "On Constitutional Judicial Procedure" has determined the validity of the conclusions and decisions of the Constitutional Court of Belarus and stated that they are final and are not subject to appeal. The provision also addresses the legal force of normative acts, which were examined by the Constitutional Court.

In Art. 86 of the said Law of Belarus "On Constitutional Judicial Procedure" defines the terms of execution of judgments and decisions of the Constitutional Court and specifies specific measures that must be taken by the authorized bodies within the specified time limits. Article 88 specified regulatory act provided the responsibility for failure to enforce, improperly enforce or impede the execution of decisions of the Constitutional Court.

Positive and important can be considered the consolidation of the Belarusian law in the law analyzed above (Article 87), which imposes an obligation on the Constitutional Court of Belarus to control the implementation of its decisions and conclusions. What is important is that the body of constitutional justice acts as the only body of the state that can evaluate the appropriateness of the implementation of the decision made by the specific entity to which it is addressed. Moreover, consequently, respond as necessary to clarify decisions or take action to hold the entity liable. In addition, the legislator grants freedom to the body of constitutional justice in the control measures carried out, formulating a rule of law in such a way that the procedure for exercising such control is determined by the Constitutional Court independently.

The legislation of the Republic of Moldova also contains rules that determine the finality and binding of the implementation of the decisions of the Constitutional Court. So, Art. 140 of the Constitution of Moldova provides for the finality and impossibility of challenging the decisions of the Constitutional Court. Also, in the Law of the Republic of Moldova "On the Constitutional Court" in Art. 28, 281, 282 set out the issues of enforcement of decisions, the time limits for the execution of decisions of the Constitutional Court and, in some cases, specific actions that are required of public authorities. Quite interesting is the norm enshrined in Art. 281 of the aforementioned law, which provides for the elimination of gaps in the legislation, which the Constitutional Court draws attention to when considering individual cases. Thus, the Constitutional Court is able to really influence law-making activities and to realize its full potential.

It should also be noted that the procedure for implementing the decisions of the Constitutional Court of Moldova is also governed by Chapter 10 of the Code of Constitutional Jurisdiction. Similar to the legislation of Belarus, in the above the normative act regulates the issue of enforcement of decisions of the Constitutional Court and control over the enforcement of decisions. Therefore, the experience of Moldova and Belarus, which has the responsibility to monitor the enforcement of decisions directly to the Constitutional Court, can be considered as positive. As noted above, only the Constitutional Court can assess the appropriateness of its decisions.

So positive is the experience of Belarus and Moldova with regard to legislative regulation of the procedure, terms and control over the implementation of decisions of bodies of constitutional justice. Therefore, it is relevant for Ukraine to draw on the experience of these states in regulating the enforcement of decisions and monitoring the enforcement of decisions of the Constitutional Court of Ukraine.

It is worth noting that the legislation of Poland, Czech Republic, and Hungary also enshrines the rules that determine the decisions of constitutional justice bodies final and binding.

Since the decision of the body of constitutional justice is the result of the exercise of its powers, the realization of the functions of constitutional justice is possible only if its decisions are fulfilled. In this connection, the problematic aspects of the implementation of the functions of the constitutional justice body are to some extent related to the issue of the implementation of its decisions.

The issue of the essence of the body of constitutional justice in Ukraine was discussed above and it was established that it is a supreme body of state power with a special status. The research of the experience of the states of Eastern Europe (Moldova, Poland, Czech Republic, and Belarus) indicates that it is advisable in the national legislation regulating the activity of constitutional justice to improve the competence of the Constitutional Court of Ukraine and give it "active" powers.

The important value for the functioning of the mechanism of state power is the solution of conflict situations between public authorities. Based on the systematic analysis, it can be noted that such a function (indirectly) in the system of bodies of state power is vested with a body of constitutional justice - the Constitutional Court of Ukraine.

Analyzing the function of securing the principle of separation of powers (the arbitration function), it can be argued that it is inherent in all bodies of constitutional justice of European states. The manifestation of this function is one of the powers of the bodies of constitutional justice to settle competence disputes between public authorities and bodies of local self-government. Due to the finality of the decisions of the constitutional justice bodies aimed at resolving the conflict between the state authorities, it is possible to maintain a balance in the mechanism of checks and balances.

One of the problematic aspects of the work of constitutional justice bodies is the existence of gaps in law. In particular, the Constitutional Court of Ukraine, unlike similar bodies of individual states, is not empowered with special powers to assess the constitutionality of legal gaps. Nevertheless, in practice, the court not only notes the existence of a gap, but also applies measures to overcome or eliminate it. Based on the above, the function of detecting gaps in law should be considered one of the most important mechanisms for the functioning of public administration.

The body of constitutional justice most often identifies and eliminates identified gaps and conflicts of law. Due to the legal force of the decisions made by the bodies of constitutional justice, it manages to eliminate legal conflicts by abolishing certain norms. However, it is more difficult to understand the role of constitutional justice in closing the gaps in law. In particular, the decisions taken by the constitutional justice body have the characteristics of a normative legal act, but they cannot replace them by themselves.

The following approaches apply to addressing the constitutional justice gap in the various Eastern European countries. Thus, in the Law of the Republic of Belarus "On Constitutional Judicial Procedure" a separate chapter is devoted to the elimination of gaps in the normative-legal acts, eliminating conflicts and legal uncertainty.

In particular, in Chapter 24 of the mentioned normative act states that the grounds for initiating proceedings in the case of the elimination of gaps in the legal acts, the exclusion of collisions and legal uncertainty thereof have been sent to the Constitutional Court by appeals of state bodies, other organizations, as well as citizens, number of sole proprietors, containing information about the existence of gaps, conflicts and legal uncertainty in the regulatory legal acts. Proceedings in the case of elimination of gaps in the normative legal acts, elimination of conflicts in them and legal uncertainty may also be initiated by the Constitutional Court on its own initiative.

Discussion. Thus, the legislature provided the Constitutional Court of Belarus with the opportunity to take an active position and take initiative in the issues of elimination of gaps, conflicts and legal uncertainty.

Based on the results of the case, the Constitutional Court of Belarus makes a decision stating the existence of gaps, conflicts, legal uncertainty in the normative legal acts, as well as formulating a proposal to a specific state body, an official about the need to eliminate these acts according to their competence, gaps they have collisions and legal uncertainty.

Since the enforcement of decisions in Belarus is directly controlled by the body of constitutional justice, its activities to eliminate gaps, conflicts and legal uncertainty are quite effective.

The legislation of Moldova is regulated in a similar way. Thus, in Art. 79 of the Code of Constitutional Jurisdiction of Moldova states that in case of detection of gaps in the legislation related to the non-implementation of the provisions of the Constitution, the Constitutional Court shall send a submission to the appropriate body, which draws attention to the need to eliminate the identified gaps.

Conclusion. In summary, it is worth noting that the Constitutional Court of Ukraine faces a number of problems in the exercise of its powers. This is due to the fact that the mechanism of government is undergoing institutional formation and the search for an effective model of functioning. Most of the Eastern European states, like Ukraine, are new democracies, in which, unlike in Western European states, constitutional justice was not formed under deep democratic conditions. Thus, the practice of constitutional justice reflects the instability of socio-political processes, non-standard models of judicial behavior, and conflicts with the executive and legislative branches of power. As a consequence, quite controversial decisions emerge due to the complexity of national political processes or the excessive caution of judges. However, the experience of individual states shows that the body of constitutional justice is an effective element of the mechanism of state power.

In the course of the research, the priority directions of improvement of mechanisms of public administration in modern conditions are considered. As a result of the conducted research, it is proposed to consider the body of constitutional justice as an element of the mechanism of state power with significant influence on the system of bodies of state power.

Considering the need to improve the mechanisms of public administration, it is proposed to improve the current legislation of Ukraine in terms of empowering the Constitutional Court of Ukraine. The activity of the constitutional justice bodies in Ukraine and the individual states of Eastern Europe is analyzed and the common and distinctive features in the possibility of influencing the mechanisms of public administration through the lens of functional characteristics are determined. Some effective approaches to the organization of stable and efficient functioning of the mechanism of state power are proposed.

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