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APPLICATION OF CONFORMAL METHOD OF INTERPRETATION OF THE CONSTITUTION IN UKRAINE AND OTHER COUNTRIES

Summary. This article provides a comprehensive study of basic doctrinal approaches of conformal method of interpretation of the constitution in national and international legislation. Found out implementation issues into national law of European countries conformal method. These cases of conformal method in the work of constitutional jurisdiction.

Keywords: Constitution of Ukraine, conformal interpretation, constitutionalism, the European Convention on Human Rights, the Constitutional Court of Ukraine.

Formulation of the problem. The interpretation of constitutional norms is a multifaceted phenomenon that is manifested in constitutional theory and constitutional practice. The study of this issue is particularly relevant in the modern constitutionalism. Basic Law of Ukraine introducing constitutional jurisdiction, was the fundamental legal basis for its operation of development Ukrainian constitutionalism.

Acts of constitutional jurisprudence formed considerable empirical material, contain a number of case law (jurisprudence), which can serve as a guideline for further legislative work, affecting the constitutional tradition, unity and stability of the legal system [1].

That is why we set the goal to explore the features conformal constitutional interpretation given the “openness” of the Constitution and the constitution of horizontal effect [2].

Objective of the article – description of conformal method of interpretation in

Ukrainian and international practice of constitutionalism.

Statement of the material. The Constitution – the foundation of constitutionalism, must begin with the fundamental norms, which implies all of the following, so it should be provided with the highest degree of stability by creating complicated procedure of revision. In legal state constitution and the gap between social practice unacceptable. To influence the state and society can only be based on a finding in those forms, the methods provided for therein.

In a fundamental sense, should bear in mind the fact that in the process of interpretation always comes to ensuring convergence of legal and actual constitution. Interpretation of the Constitution – the basis of the actual constitution, but in any case should not contradict a written constitution. Compliance actual legal constitution – the basic criterion of

adequacy of interpretation and the latter an indispensable condition for implementation of the functions of the constitution to streamline the organization and functioning of society, stabilize the institutions of constitutional order, so implementation of the theory of constitutionalism, its implementation in practice.

Any act of the Constitutional Court has interpreted to ensure its internal consistency as systemic interpretation methods involves no contradiction implicit in the act, which is subject to interpretation. In view of this, the Constitutional Court is faced with a dilemma: whether to recognize unconstitutional legal act or rule if he brings more conflicts in the content standards of the current Constitution of Ukraine or threatens the common understanding of its provisions? Is it possible to interpret this conflict/gap in the constitutional context? And whether the constitutional recognition of the legal act justified in terms of legal certainty (predictability impact of the law) legality and expectations [3].

Conformal interpretation of the constitution is to elect a compromise interpretation of constitutional norms by which even in the case of unconstitutionality of the provisions of the legal act that is the subject of constitutional review, he recognized force in the part where it meets the constitutional principles and norms [4, 5].

This practice is widespread in Europe and North America. This happens when interpreted the provisions of a legal act is ambiguous interpretation and subject to specific legal situation he is given only in the context of interpretation of constitutional principles and norms.

The term “conformity” is rarely used in the Ukrainian constitutional law

because it is not currently adapted to monolingual dictionaries, for example, interpret it like “conformism compliance” or “opportunism”, “compromise.”

Conformal interpretation of the constitution is debatable in terms of the legitimacy of judicial activism [6] as expressing the law-making function of constitutional justice in cases of legal uncertainty. According to the principles of constitutionality, in the work of the Constitutional Justice conformal interpretation should be based on the principles of separation of powers and can not include the potential interference within the scope of the legislator.

According to the principles of constitutional and conformal interpretation of the law can not be recognized invalid if it can be interpreted as to comply with the constitution. Constitutional conformal interpretation – quite common in German constitutional law.

According to constitutional interpretation of laws conformal solved not only the constitutionality of the content of the law, but also analyzes the content of the constitution, which the law should be agreed.

Unsuccessful example conformally constitutional interpretation is the decision of the Constitutional Court of Ukraine № 11/2012, which was declared constitutional part independent in the formation of the parliamentary coalition as the legitimate foundations of investiture of the government, although it was not significantly stemmed from the analysis of the current at the time of Article 83 of Constitution. Main idea this decision was based on constitutional guarantees of freedom of political activity (article 15), defining the principles of free mandate of parliamentarians (although he also had the time elements of the so-called “party” imperative) and the Supreme

Council of discretion to determine the law of its rules of procedure the order of forming the coalition factions.

We agree that the fallacy of this decision is that the Court effectively equalizing the legal force of the Constitution and the law on the Verkhovna Rada (separate opinion of Judge P. Stetsiuk), distorting the essence of the content of the legal construction of the provisions of Article 83 of the Constitution (separate opinion of Judge Shishkin). An analysis of the decision shows that the Constitutional Court of Ukraine not found all aspects of the content of constitutional mandate of Parliament to give its interpretation of the controversial aspects of regulation at the level of the Verhovna Rada, violating the principles of the hierarchy of legal acts defined by Article 8 of the Constitution of Ukraine. After all, you cannot give the interpretation of constitutional provisions by statute if this part of the Constitution defines the fundamental principles and limits the discretion of Parliament as such is limited in the third paragraph of Article 83 of the Constitution of Ukraine (the Law № 2222-IP on December 8, 2004).

In particular, the provisions of the constitution as the regulation specified and detailed in the legal acts of the Constitutional Court. Parliament in making laws related constitutional jurisprudence (set of legal positions of constitutional courts for the same constitutional provisions and the same object of regulation) on the constitutional provisions on development which adopted a law [8].

The resolution of the constitutional controversy constitutional courts should consider means to ensure the dynamic development of the law in accordance with the existing social and political conditions and developments

constitutional traditions. We agree with the opinion that this constitutional courts may use different methods: a) fix the gaps in the current legislation interpretation by state regulation and then overcoming gaps in existing legislation; b) to recognize the unconstitutional gaps in existing legislation and require the entity to remove a lawmaking omission; c) though not recognize unconstitutional legislative omission, but critically evaluating them, recommend them to fix the subject of law-making and provide for courts requires interpretation, pointing out the superiority of its decision [9].

The Constitution as the fundamental law needs to specify it's a provision in their regulations the current constitutional law. Of particular importance acquires constitutional law in the case of interpretation of the constitution, which defined guarantees of rights and freedoms. In the Constitutional Court has to consider the "horizontal effect" fundamental rights and freedoms enshrined in the Constitution of Ukraine, are a kind of values to interpret the defining model (gear) ratio constitutional rules of ordinary law norm.

Indeed, the correlation between fundamental law and ordinary law is to ensure that these laws can establish restrictions of fundamental rights according to their contents and shall be construed in the light of fundamental rights and the coherence of their content and volume (substance content of basic rights). [8] In this regard unconstitutional phenomena gaps and contradictions in the legislation as violating the principles of legal certainty, that the obligation of public authorities to bring to appropriate public content regulations that determine the content of their rights and obligations. If we consider the dynamics of constitutionalism, the

role of interpretation of the constitution further increases. Interpreting the Constitution interpreter authority often goes beyond legal constitution, since the actual constitution is in constant development and movement. The degree of divergence of legal and actual constitution is often quite large. Interpretation specifies the content of the constitutional provisions, and in such cases it is the initial value, and then develop a constitution and, in turn, constitutionalism in general. Thus, there is constructive potential and meaning in a statement that the interpretation of the constitution serves as a tool support.

For the development of Ukraine as a legal state, which will be ensured by the rule of law, the problem of interpretation of legislation becomes of primary importance. This is primarily due to the experience that little enforcement in our society on the eve of a historical turning to the idea of the rule of law and the rule of law. In the spirit of Soviet traditions of Ukrainian society ideas of law and rule of law interpreted much the same as the idea of communism is nothing of this, we will not work, but if you want to simulate the development of the rule of law (construction of communism), we will pretend we do it. Ten years after the adoption of the Constitution in respect of S. Shevchuk Ukraine stated that “the fundamental human rights enshrined in the European Convention on Human Rights.

Analogy creation in Ukraine of law and the rule of law with the construction of communism in the Soviet Union, especially correctly expresses the essence of things in the background of statements a prominent Russian writer Fyodor Dostoyevsky that invented the idea of socialism is not to raise earth to heaven but to pull heaven on earth. Indeed, the process of raising public to the idea of the rule of law and the rule of law (to heaven) and the rule of law is not or is too slow. But heaven on earth lowered: see — we almost completely built up the rule of law and ensured the rule of law as enshrined in the Constitution, and the most active participants of this building marked the highest state awards and the title of academician. So what you see is called the rule of law and the rule of law.

Conclusion. Therefore unconstitutional aspects of the legal act that is the object of constitutional control by virtue of the provisions of Art. 152 of the Constitution of Ukraine, the Constitutional Court should not be taken into account. Conformal interpretation of the Constitution of Ukraine entails constitutional provide a common legal understanding, harmonization of law and a guarantee of legal certainty current legislation. Thus, the Constitution Court acts are the result of a direct impact on the current legislation, constitutional overcoming conflicts and ensuring legal solution to the problem about the content ambiguous provisions of the acts of the current legislation.

REFERENCES:

1. Конформне тлумачення Конституції та забезпечення єдності правової системи в діяльності Конституційного Суду України / М.В. Савчин, Р.В. Марчук // Бюлетень Міністерства юстиції України. — 2010. — № 11. — С. 44-52.
2. Государственное право Германии: Сокращен. пер. немецкого семитомного изд. / РАН. Ин-т государства и права. — М., 1994. — Т. 2.
3. Погребняк С.П. Основоположні принципи права (змістовна характеристика): Монографія / С.П. Погребняк. — Х.: Право, 2008. — 240 с.

4. Klima K. a kol. Encyklopedia ustavnihho prava / K. Klima a kol. — Praha: ASPI, a.s., 2007. — 776 s.
5. Deutsches Staatsrecht. Ein Studienbuch von Reinhold Zippelius und Th omas Wuertenberger. 31. Aufl age des von Th eodor Maunz begründeten Werkes. — Mün.
6. Вей С. Принципи конституційної інтер претації і самообмеження конституційного судді / С. Вей // Вісник Конституційного Суду України. — 2002. — № 2. — С. 57-59.
7. Савчин М. Природа актів Конституційного Суду України: теоретико-методологічні аспекти // Вісник Конституційного Суду України. — 2007. — № 5. — С. 71-78.
8. Шевчук С. Судова правотворчість. Світовий досвід і перспективи в Україні. — К.: Реферат, 2006. — 640 с.

Богданевич Т.С.

Застосування конформного способу тлумачення конституції в Україні та інших країнах.

Анотація. У статті здійснено комплексне дослідження основних доктринальних підходів розвитку конформного способу тлумачення конституції у національному та міжнародному законодавстві. З'ясовано питання імплементація в національне законодавство європейських держав конформного способу. Наведені випадки застосування конформного методу в діяльності органів конституційної юрисдикції.

Ключові слова: Конституція України, конформне тлумачення, конституціоналізм, Європейська конвенція з прав людини, Конституційний суд України.

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Применение конформного способа толкования конституции в Украине и других странах.

Аннотация. В статье осуществлено комплексное исследование основных доктринальных подходов развития конформного способа толкования конституции в национальном и международном законодательстве. Выяснен вопрос имплементации в национальное законодательство европейских государств конформного метода. Приведенные случаи применения конформного метода в деятельности органов конституционной юрисдикции.

Ключевые слова: Конституция Украины, конформное толкования, конституционализм, Европейская конвенция по правам человека, Конституционный суд Украины.

