LEGAL REGULATION OF THE GROUNDS FOR SUBMISSION OF CONSTITUTIONAL APPEAL TO THE CONSTITUTIONAL COURT OF UKRAINE IMPROVEMENT

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Abstract. This article draws attention to the issue of the Ukraine’s legislation improvement in the field of the constitutional appeal lodging by natural persons and legal entities, in particular concerning legal grounds for such submission. As indicated, ensuring of the access to the constitutional justice is a necessary requirement of man and citizen rights and freedoms effective protection. On the basis of the Constitutional Court of Ukraine practice there are detected principal problems of requirements to the constitutional appeals that should be observed so as the constitutional proceeding to be initiated. Moreover, different scientific approaches to the indicated problems solution are analyzed and evaluated, as well as proposals on the legal institute of constitutional appeal improvement are provided.

Keywords: the Constitutional Court of Ukraine; constitutional appeal; subject of the right to constitutional appeal; grounds for the constitutional appeal; ambiguous application of the Constitution or laws of Ukraine provisions.

Introduction

At a current stage of the political and legal system of Ukraine reformation the need for further strengthening of democratic institutions is a necessary prerequisite of qualitative transformation, as it would guarantee a full degree of society development and conversion of the state into social, democratic and legal. One of the instruments ensuring the effectiveness of required transformations, in accordance with the national Constitution, is the institute of constitutional justice as a guarantee of state apparatus efficiency.

Researchers of the Constitutional Court of Ukraine (hereinafter – “the CCU”) are not unanimous on its nature and work content, functional loading, place among the public authorities and among the judicial system in general, as well as on its role and impact limits on the rights and freedoms of man and citizen ensuring. Thus, nowadays the jurisprudence does not explore completely the issues both of the constitutional jurisdiction of Ukraine as a guarantor of man and citizen rights and freedoms, and of its place in the human rights protection mechanism.

Among the issues requiring a scientific research it is necessary to allocate the institute of constitutional appeal to the CCU as one of the additional mechanisms for protection of rights and freedoms of man and citizen in Ukraine. The review of legislation on the legal regulation of constitutional appeal to the CCU and its application practice reveals certain controversial and ambiguous aspects of the human rights protection mechanism effective implementation that require a comprehensive analysis. This article is to dwell on separate aspects of the legal regulation of grounds for the constitutional appeal submission to the CCU.

Method

In the process of this analytical study, there have been applied both general and special methods of academic cognition that ensured the outcomes reliability and the possibility of the encircled goals and objectives solution by author. Dialectical method constitutes the methodological basis of this article that allows analyzing of general characteristics of the constitutional appeal institute in Ukraine. Among special methods the following have been used in the study: formal and logical method – for analysis of a conceptual apparatus of constitutional appeal mechanism implementation problems; systemic – for analysis of legal norms governing the constitutional appeal institute in Ukraine; comparative legal – for analytical comparison and establishment of correlation between constitutional and legal regulation of institutes contiguous with man and citizen rights and freedoms protection in Ukraine.
Results

According to the Article 150 of the Constitution of Ukraine and the Article 13 of the Law of Ukraine "On the Constitutional Court of Ukraine" (hereinafter – "the Law"), the CCU decides on official interpretation of the Constitution and laws of Ukraine upon constitutional appeals of Ukraine’s citizens, foreigners, stateless persons and legal entities. Pursuant to the Article 42 of the Law, constitutional appeal is a written request to the CCU on the necessity of an official interpretation of the Constitution and laws of Ukraine provisions so as to ensure the realization or protection of constitutional rights and freedoms of man and citizen and rights of legal person.

As prescribed by the Law, the constitutional appeal should include a justification of the need for an official interpretation of the Constitution of Ukraine or laws of Ukraine, confirmed by documents and materials. The ground for the constitutional appeal concerning the official interpretation of the Constitution and laws of Ukraine is the availability of ambiguous application of the Constitution or laws of Ukraine by Ukrainian courts or other state authorities, if the subject of the right to constitutional appeal considers this can lead or result in violation of his constitutional rights and freedoms (Article 94 of the Law).

Therefore, it is necessary to allocate two basic requirements that should be observed by a subject of the right to constitutional appeal: 1) ambiguous application of the Constitution or laws of Ukraine provisions by Ukrainian courts or other public authorities; 2) such ambiguous application of the Constitution of Ukraine or laws of Ukraine provisions, in the opinion of the subject of the right to constitutional appeal may lead or result in the violation of constitutional rights and freedoms of this very subject.

In practice, a person intending to submit the constitutional appeal to the CCU may face certain difficulties concerning justification of the ambiguity of the legislation application by Ukrainian courts or other public authorities. In particular, as indicated by the CCU in its Resolution of the 12th of May, 2010 N31D-y/2010, the ambiguous application of the Constitution or laws of Ukraine provisions should be interpreted as different application of the same rules of these legal acts by courts of Ukraine, other state authorities under identical legally significant circumstances (Official website of the Supreme Council of Ukraine, 2010).

General analysis of the CCU resolutions on refusal to initiate constitutional proceedings confirms that the grounds for such refusal lie in the applicants’ failure in providing proper justification of the ambiguity of the Constitution or laws of Ukraine provisions application by Ukrainian courts or other public authorities. Materials attached by the applicants as evidence of ambiguity that in the overwhelming majority of cases are court decisions include differences that are explained not as a result of the same legal rules different application but of different circumstances availability.

Deciding on the constitutional proceedings initiation, the CCU proceeds from the fact that ambiguity takes place in case if the same legal act rule is applied by the public authorities differently under identical circumstances as mentioned in the reasoning part of the CCU Resolution of the 16th of November, 2006 N13-y/2006 (Official website of the Supreme Council of Ukraine, 2006).

Rather widespread are the cases, for instance the CCU Resolution of the 11th of June, 2015 №24Dy/2015 (Official website of the Constitutional Court of Ukraine, 2015), when the person submitting the constitutional appeal to the CCU justifies it by the legislation controversial application by the courts of different instances in cases concerning the same subject and the same reasons. These circumstances may not be recognized as grounds for the constitutional proceedings initiation. First of all, such issues should be resolved in the courts of general jurisdiction, as they are to investigate specific facts and circumstances of the case. Moreover, the applicable procedural law confers to the participants in the process all rights and obligations necessary for the effective dispute resolution on the merits.

These situations occur even nowadays, although in 2005 the CCU has expressed its legal position, set forth in the Resolution of the 13th of October, 2005 N36-y/2005 (Official website of the Constitutional Court of Ukraine, 2005), mentioning that decisions of the general jurisdiction courts of different instances in the particular case between the same parties on the same subject and for the same grounds are not recognized as a fact of the legal norm ambiguous application.

This logically leads to the opinion that such state of affairs is caused by the lack of understanding of the sole body of constitutional jurisdiction nature in Ukraine. Persons applying to the CCU perceive it as the institution that should decide the case on the merits, as a part of the general jurisdiction courts system. On the other hand, this indicates the greater level of public confidence in the CCU than in the ordinary courts, their capabilities for a qualitative cases revision in the appellate and cassation instances.
In the context of the study of ambiguous application of the Constitution or laws of Ukraine provisions as the ground for application to the CCU, it should be noted that according to T. Tsymbalistyi, this legal requirement significantly restricts persons’ and entities’ possibilities regarding their rights protection in the CCU, as in fact application subjects have either to seek facts of controversial application of legislation, or to expect when the facts will emerge. Therefore, the subjects of the right to the constitutional appeal face a complex task – initially to detect the ambiguity and then to justify it (Tsymbalistyi, 2004).

Eventually, the shortcomings of current Ukrainian legislation, including procedural laws, do not always allow to define or distinguish the presence of ambiguity in full measure. There are cases when imperfect formulation of the legal act causes the need for official interpretation for the effective, proper and uniform enforcement, however the person is deprived of the right to appeal to the Court due to a formal requirement to find an ambiguity. The situation is aggravated by the fact that the presence of ambiguity is not a guarantee of an opportunity for appeal to the Court and of the constitutional proceedings initiation, as the second necessary ground for a constitutional appeal submission is that the presence of ambiguous application of the Constitution of Ukraine or laws of Ukraine provisions may lead or result in the violation of this person’s constitutional rights and freedoms, as set forth in the CCU Resolution of the 31st of May, 2011 N15-y/2011 (Official website of the Supreme Council of Ukraine, 2006). Thus, the law restricts the human rights protection activity of the civil society actors through the use of the instrument of constitutional appeal for the official interpretation of the law.

As provided by the Article 42 of the Law, the constitutional appeal should include documents relevant thereto, in particular copies of the court decisions confirming ambiguous law enforcement. The possibility of obtaining the relevant court decisions copies, certified by responsible official of the court with the court seal attached is foreseen by the Article 9 of the Law of Ukraine "On access to the court decisions" of the 22nd of December, 2005 N3262-IV (Official website of the Supreme Council of Ukraine, 2005) and certain other regulations. However, a search of the legislation implementation ambiguity within the Unified State Register of court decisions that functions under the abovementioned Law of Ukraine "On access to the court decisions" may be complex and burdensome. Certain problems are related to the issues of technical and methodological reflection of the required information in a judicial decision and the search system applied in the Register. Thus, the decision may include information on the legal rules ambiguous implementation; however it is formulated in a textual form that complicates the search using the Register tools.

On the other hand, the requirement of justification of ambiguous application of the Constitution and laws of Ukraine by Ukrainian courts or other state authorities derives from the substance of introduced model of constitutional jurisdiction and accordingly the existing legal regulation of this issue. At the stage of being addressed, the CCU is neither empowered to gather and evaluate documents, including evidence of the law ambiguous application in a particular case, nor entitled to exercise any initiative on this issue, i.e. independently indicate legislation shortcomings. Passive status of the Court in the proceedings initiation is, according to the predominant global doctrine of constitutional jurisdiction and national legislation direction, one of the manifestations (characteristics) of its impartiality. Hence, the duty of demands argumentation and reasoning shall be imposed on the subjects of appeal.

Another doctrinal feature of the CCU in the light of possibility to appeal directly to the Court is that the CCU is the court of law that provides legal guidance on legal understanding of the Constitution or laws of Ukraine provisions. The CCU judge in retirement V. Shishkin has draw attention to the abovementioned characteristics of the Court (Shyshkin, 2011).

Moreover, as indicated by the CCU judge in retirement V. Tykhyi, another one characteristic feature of the Court, is that the CCU considers constitutional appeals of natural and legal persons not only on the condition there is availability of ambiguous application of the Constitution or laws of Ukraine provisions, but as well if there is at unequivocal, but improper application of certain Constitution or laws of Ukraine provisions that in the opinion of the subject of the right to constitutional appeal may lead or result in the violation of his constitutional rights and freedoms. If the ambiguous application of the Constitution or laws of Ukraine provisions by the courts or other state authorities may lead to the violation of the constitutional rights and freedoms, these rights and freedoms are especially threatened by uniform but incorrect application of the law (Tykhyi, 2011).

Unfortunately doctrinal position indicated above has not been duly reflected in the CCU activity. On the basis of the analyzed issues it may be concluded that the institution of constitutional appeal in Ukraine is not
implemented in a full scope. This situation is related to the Article 94 of the Law requirements, in particular to the necessity of the availability of ambiguous application of the Constitution or laws of Ukraine provisions by Ukrainian courts or other public authorities as the ground for such appeal.

The abovementioned legislation provisions to a certain extent set the limits on the rights and freedoms of man and citizen protection through the institute of constitutional justice application. In this regard it is necessary to modify the conceptual approaches to the constitutional appeal institute and to introduce new mechanisms so as to guarantee the supremacy of the Constitution of Ukraine as the state Fundamental Law within the entire territory of Ukraine and accordingly to the protection of man and citizen constitutional rights and freedoms.

As identified, the CCU should proceed from the fact that the greater number of citizens are informed on their constitutional rights, freedoms and duties, the CCU competence and the relevant laws of Ukraine requirements concerning the constitutional appeals, the wider path of opportunities to restore their violated constitutional rights they will have that will facilitate the implementation of the established by the Constitution of Ukraine program principle of the legal state development. The CCU will continue to improve the forms of access to the constitutional justice for citizens of Ukraine, foreigners and stateless persons (Golovin, 2011).

References


