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THE IMPACT OF POLITICAL NETWORKS ON THE PLACE AND ROLE OF THE CONSTITUTIONAL COURT IN THE SYSTEM OF STATE ADMINISTRATION

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Abstract: *The article examines the place and role of the constitutional Court of Ukraine in the system of authorities, examines a set of issues related to its activities, and highlights problematic issues that lead to a violation of the balance of power, including dangerous trends in the use of the constitutional court for political groups to solve their tasks and achieve political goals. The study of state reform in Ukraine showed the problematic issues of transformation of party and political structuring, highlighted the main causes of the political crisis and summarized the reasons why the democratic transformations that have begun in the country will not be able to achieve their main goal-the consolidation of democracy. It is noted that the lack of national consciousness, low level of political culture, excessive ambitions of leaders and their desire for power as a means of personal enrichment model conflicts of a destructive nature, threaten to change the system of democratic values, deconstruct the political system and destroy the national state.*

Keywords: *constitutional court, powers, President, state body, political influence.*

INTRODUCTION

In the modern world, the implementation of democratic values in public relations is a necessary condition for any state. Each of the state institutions has its place in the system of public administration. Depending on the powers and mechanisms that determine the sustainability of public authorities, their role in the system of public administration and the system of checks and balances may differ significantly.

The main powers of the constitutional Court, which, as a rule, are regulated by the Basic Law of the state, include constitutional control exercised independently and independently through constitutional proceedings, the competence to assess the compliance of legal norms with the Constitution. The state institution, which by virtue of its competence has a significant influence on the political processes in the state, itself often becomes an object of influence from other actors occupying a place in the system of state power or attempting to win power or be represented in power.

Modern practice of constitutionalism testifies to continuous attempts to use the constitutional court for the decision of political groups of these or those tasks, achievement of the political purposes. The mechanisms of implementation are different, including the use of political influence on the formation of the constitutional Court through the appointment of judges of the constitutional Court, making submissions to the constitutional Court that relate to issues not directly identified in the Constitution, the provision of political pressure. As indicated in the study (Rosenko et al., 2019), the consequences of departing from the main constitutional principles are destructive for statehood, which actualizes the topic of the study.

The aim of the study is to study the place and role of the constitutional Court of Ukraine in the system of authorities, the factors influencing the activities of this body of constitutional jurisdiction, the allocation of groups of problematic issues that lead to a violation of the balance of power, including dangerous trends in the use of the constitutional court to solve their tasks and achieve their own political goals, as well as the problems of transformation of party-political structuring and the causes of the political crisis, as a result, democratic reforms in the country will not be able to achieve its main goal-the consolidation of democracy.

METHODS

The study was based on a dialectical approach to the disclosure of legal phenomena and processes using General scientific (system, logical, analysis and synthesis) and private scientific methods. Among the private-scientific ones, formal-legal and comparative-legal were used to study the texts of constitutional-legal norms regulating the establishment and activity of the constitutional Court of Ukraine in order to identify the features of the transformation reflection in the context of state reform and democratic transition in Ukraine, its place and role in the system of state power. Legal comparative studies, as a fundamental basis for legal research, allowed the use of comparative legal tools to fill the theoretical and practical gaps in the legal regulation of the institutions of modern constitutionalism. The methods of normative and functional comparison allowed to identify the mechanisms inherent in the constitutional norms in the studied state, through which it is possible to influence the system of public administration, its institutions, intervention in the system of checks and balances, disturbing the balance of power.

RESEARCH RESULTS

Studies of socio-political processes and essential aspects of state reform in Ukraine have shown that the processes of political structuring in Ukrainian society are quite complex and contradictory. Since 2004, attempts have been made to use the constitutional Court for political purposes (Kyrychenko, 2017). The existing political crisis in Ukraine, its increased conflict field, which is the subject of discussion of world politics, was predicted. Scientists and politicians who were engaged in research of political processes in Ukraine, the analysis of consequences, the made political state decisions, tendencies on change of a vector of geopolitical development, methods of interaction of the power and opposition, pointed to the increased conflictogenicity, to dangerous approach to a point of "no return". But political leaders, for various reasons, could not find a compromise solution and were not inclined to dialogue. The example of Ukraine shows that the introduction of democracy in "split" societies, which had no experience of constitutional liberalism, actually leads to the growth of nationalism, ethnic conflicts and even the emergence of war. In this regard, the most important issue is the need to create a strong "liberal" base of democratization.

DISCUSSIONS AND RESULTS

The constitutional reform of 2004 (Zakon Ukraïni № 2222-IV, 2004), which was supposed to strengthen democracy and form a more effective model of public administration and is designed to create a new configuration of power relations, to structure society through incompleteness, further unbalanced the political system of Ukraine. In the conditions of existence of several political forces in Ukraine, none of them received a significant political advantage and was not capable of long-term compromise, the constitutional reform strengthened the split of Ukraine. It was the cause and catalyst of a number of crisis phenomena, which testified to the lack of consolidation of power, a single development program and a national idea. As a result of the 2006 parliamentary elections the split occurred not only along the lines of Executive and legislative power, but also within the Executive power itself, the two main positions in the government – the President and the Prime Minister-were occupied by politicians diametrically opposed in their mental and ideological beliefs and views. There was a situation when political opponents were given maximum opportunities to block activities relative to each other, while not having sufficient resources to obtain a decisive advantage (Rosenko, 2016).

The confrontation between the authorities and the opposition resulted in a political conflict between the highest officials of the state. This was evidenced by the relations between the President and the Verkhovna Rada (2004, 2006, 2007), between the President and the Prime Minister from the opposition party, between the President and the Prime Minister, who were representatives of parties that were positioned as political associates and coalition partners (Ray, 2017). Restriction of powers of the President on constitutional reform of 2004 has led to the fact that the head of state has lost possibility of the real guarantor of the Constitution which would balance branches of the power, would be a key link in difficult system of power hierarchies.

After becoming President, Viktor Yushchenko took certain steps to pass through the constitutional Court a decision on the abolition of the 2004 reform, which significantly limited the powers of the President. This is confirmed by the fact that

Viktor Yushchenko agreed to work with his main rival Viktor Yanukovich as head of government only if the Verkhovna Rada approves his candidacies for judges of the constitutional Court. The powers of the President were not expanded because the opposition was categorically against the proclaimed and entered into force changes to expand the powers of the Rada.

The appeal in the constitutional Court of the mentioned Decree on dissolution of the Verkhovna Rada and early elections led to replacement of structure of court, dismissal of the judges who doubted constitutionality of the Decree of the President, and the edition of one more Decree (from 26.04.2007 No. 355) dissolution of the Verkhovna Rada of Ukraine. From that moment, the confrontation between the branches of government centered around the constitutional Court, and in a literal sense: both sides brought their supporters under its walls.

Indicative are the statements of the Chairman of the constitutional court of Ukraine A. Strizhak, who noted "that under his leadership, the constitutional court worked in quite difficult conditions, because" the previous government experimented on the Constitutional court." He mentioned that almost a year the constitutional court did not work due to the fact that the judges could not take the oath, recalled the decrees of President Yushchenko on the dissolution of the Verkhovna Rada and the blockade of the constitutional court, as well as the dismissal of a number of judges "for violation of the oath", emphasizing that "until now, no one knows (Strizhak, 2010).

The political crisis demanded a solution. After a number of mutual accusations, appeals to the constitutional Court, from the joint statement of the President of Ukraine, the Chairman of the Verkhovna Rada and the Prime Minister of Ukraine on urgent measures aimed at overcoming the political crisis by holding early parliamentary elections. According to Presidential Decree No. 497 of 05.06.2007, the elections were scheduled for 30.09.2007 (previously, Decree No. 355 of 26.04.2007 on holding early elections was cancelled).

All these contradictions and uncertainty in constitutional reform that led to a systemic crisis of power and the blocking of the main institutions of government resulted in a revision of the constitutional reform, aimed at strengthening the President's powers and restore its role as the defining center of influence and political arbitrator.

Amendments to the Constitution in 2004 were declared unconstitutional by the Constitutional Court due to the violation of the norms of the Constitution of Ukraine on the procedure of consideration and approval (without a decision of the constitutional Court) (Rishennja Konstitucijnogo Sudu Ukraïni № 20-rp, 2010). At the same time, a separate Law was adopted with regard to the powers of the constitutional Court and the prevention of abuse of the right to constitutional filing (Zakon Ukraïni № 1168-VI, 2009). In fairness, it should be noted that during the adoption of the law on constitutional reform, it was impossible to challenge the decision of the Verkhovna Rada of Ukraine in the constitutional court, because the Parliament blocked the appointment of judges on its own quota.

Compliance with the Constitution is one of the conditions for the legitimacy of the legislative process and manipulation by the Supreme body of constitutional jurisdiction has a negative impact on the state's political system and the quality of democratic procedures. The Ukrainian experience of state building shows that attempts to remake the Basic Law under the most influential elite at the moment of time are made for a long time. Thus, the issue of political reform in 2004 was resolved, its revision in

2010, after the change of power unconstitutionally in 2014 and its legitimization by elections. Questions "can positive change be achieved in an unconstitutional way? Will a law passed and reinstated in violation of the fundamental principles of a democratic state be legitimate?", which put the experts investigating the constitutional process in Ukraine, have a clear decision "not the right should serve politicians, but Vice versa. Politicians come and go, and the Constitution must remain unchanged. Or at least not to change for the sake of the political situation» - Quotation (Chimnyj, 2014).

CONCLUSION

According to the results of the study, it is concluded that any reforms can be carried out, including, as practice has shown, unconstitutionally, but it is impossible to restore the monosubjectness of the Supreme power in the country. The subjects of politics that influence the political processes and the state structure of Ukraine in 2014 included public formations of the ultra-right wing of the political spectrum, which do not bear political responsibility for their actions, but have a strong influence on public and political figures.

If earlier the main influential Institute of audit of constitutionality of the made state decisions was the Supreme Court, subsequently-constitutional to which authorities and the highest officials of the state appealed, and this body as the tool influencing function of a consequence of the conflict, could really influence historical destiny of Ukraine, now this Institute, as well as the Constitution, do not play The emphasis shifted to the already named formations and international consultants.

For almost four years, the constitutional Court could not exercise its powers, as it did not exist in full, without a Chairman and approved Regulations (Savickij, 2017). In order to elect the President of the constitutional Court, it is necessary that at least 10 judges support a certain candidate, and this indicates the need to have a guaranteed majority. The position of head of the constitutional court became vacant when the term of office of judge Yuri Baulin expired. By the way, for a long time the judges of the constitutional court could not agree on the new rules. As noted in the study, " with vacancies, this is almost impossible, since the rules must be approved by at least 12 judges of the COP (Konstitucionnyj Sud: ni rukovoditelja, ni reglamenta, 2017). The President of the constitutional Court of Ukraine was elected on February 21, 2018. The KSU regulations were approved on February 22, 2018.

The full constitutional Court of Ukraine was formed only by the end of 2018, when the President of Ukraine decided on two judges of the constitutional Court on the presidential quota (after 4 years of presidency!) on their nomination of judges (4 positions in the Constitutional Court remain vacant for a long time..., 2018). The "constructive" atmosphere within the constitutional Court can also be judged by the recent decision to recognize the unconstitutional article of the criminal code of Ukraine on illegal enrichment (Reshenie Konstitucionnogo Suda Ukrainy №1-p, 2019). The majority of judges of the constitutional court (14) supported the decision to repeal article 368 of the Criminal code on illegal enrichment. According to it, the acquisition or transfer of wealth to public officials, the legality of which is not confirmed by evidence, is punishable by imprisonment up to 10 years with confiscation of property. Article 368-2 of the Criminal code on punishment for illegal enrichment was declared unconstitutional because it "violates article 62 of the Constitution of Ukraine and the presumption of innocence". Now all cases concerning illegal enrichment which were initiated by

National anti-corruption Bureau of Ukraine, including concerning heads of the highest level, people's deputies, have to be closed. A civil servant in such a situation can make a Declaration of millions of income without explaining the source of their origin.

Currently, we can observe the next stage of attempts to use the Constitutional Court of Ukraine for political purposes. The subject of the confrontation was anti-corruption mechanisms and tools for their implementation, in particular, verification of the reliability of information in the income declaration, responsibility for false information in declarations, special verification when appointing to senior public positions, access of the National Anti-Corruption Bureau of Ukraine (NABU) to information in state registers.

As noted earlier, the National Anti-Corruption Bureau of Ukraine (NABU) was established to strengthen the fight against corruption in Ukraine. A special body, the National Agency for the Prevention of Corruption (NAPC), was created to collect and verify the declarations. A special court has been established to deal with cases of corruption offences - the Supreme Anti-Corruption Court. The Criminal Code of Ukraine introduced the article "Illegal enrichment", which provides for criminal liability.

The political crisis in Ukraine, which unfolded at the end of 2020, is associated with the confrontation between the KSU and the National Anti-Corruption Bureau of Ukraine (NABU), which resulted in an open confrontation and tightens more and more parties.

The Constitutional Court of Ukraine (CCU) at a closed session on October 27 at the request of a group of deputies of the Verkhovna Rada changed the anti-corruption legislation. In particular, the court abolished criminal liability for officials and deputies for false declaration of income.

The KSU also limited the powers of the National Agency for the Prevention of Corruption (NAPC). In particular, the court forbade the NAPC to check the electronic declarations of officials. The KSU also deprived the agency of access to state registers, which are necessary for conducting special checks of candidates for senior positions in state bodies. Without these checks, no head of a State body can be officially appointed.

The KSU stressed that these powers of the NAPC contradict the independence of the judiciary, although it was only about declaring the income and expenses of judges, and not about interfering in the activities of the judiciary. The arguments of the Constitutional Court that the branches of government in Ukraine are independent of each other, and the NAPC is an executive body, and therefore, when checking the declarations of judges is an interference of the executive power in the judicial system, this is a violation of the Constitution, seem unconvincing.

In addition, KSU attempts to influence the activities of the National anticorruption Bureau of Ukraine (NABU) by recognizing the illegal use of his head for the position in 2015, the removal from office of the head of KSU President Viktor Zelensky and attempts to change the system of appointment and dismissal of judges of the constitutional Court of Ukraine testify to the conceptual differences in approaches to organization of public administration, the system of checks and balances, the place and role of the political institutions of the state in regulating of social relations.

According to S. Rudenko, "the abolition of criminal liability for false declaration of property by officials by the Constitutional Court of Ukraine caused a legal collapse" (Rudenko, 2020). Attempts are being made to solve it with the help of international organizations. So: "on November 25, Vladimir Zelensky appealed to the Venice Commission with a request to assess this decision of the KSU. The Venice Commission

advised to keep the system of electronic declaration of assets by officials and recommended to create in Ukraine a body for the selection of judges with the participation of international experts and representatives of civil society" (Gunkel, 2020).

In the modern world, a departure from democratic rules and procedures is met with rejection by the international community. With high probability, it can be argued that Ukraine will be forced to implement the programs of the National Anti-Corruption Bureau and instead of the repeal norm, another one will be introduced, less stringent, or leading away from the responsibility of certain persons and for certain crimes, such as for illegal enrichment using official position or abuse of power.

The place of the constitutional Court in the system of separation of functions of government and its role in the implementation of the principle of separation of power and, in particular, such a structural element, as the authority of constitutional jurisdiction indicate that this institution is in how it is created, and the existing probability of carrying on his political influence in the studied country may not be the state institution that protects real democracy and the rule of law, This requires the adoption of a consolidated decision by political elites on the inadmissibility of abuse of influence on the Highest Body of constitutional jurisdiction, the state arbitrator, which is the Constitutional Court.

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