

Конституційний юрисдикційний процес в Україні: сучасний стан та перспективи удосконалення

У монографії обґрунтовано теорію та практику сучасного стану та перспектив удосконалення конституційного юрисдикційного процесу в Україні, зокрема його доктрини та методології дослідження, правової регламентації, поняття, особливостей, принципів, стадій, суб'єктів, проблем реалізації, ефективності як засобу захисту конституційних прав та свобод людини і громадянина, а також розроблено на цій основі положення, узагальнення, висновки, рекомендації та пропозиції, спрямовані на його оптимізацію, зокрема шляхом внесення низки змін до національного законодавства з питань юрисдикційної діяльності Конституційного Суду України.

Видання розраховане на державних службовців, працівників органів законодавчої, виконавчої та судової влади, органів місцевого самоврядування, науковців та студентів юридичних факультетів закладів вищої освіти, а також усіх, хто цікавиться даною проблематикою.

Олександра СПІНЧЕВСЬКА

**КОНСТИТУЦІЙНИЙ ЮРИСДИКЦІЙНИЙ
ПРОЦЕС В УКРАЇНІ:
СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ
УДОСКОНАЛЕННЯ**

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ANNOTATION

O. Spinchevska. Constitutional jurisdictional process in Ukraine: current state and prospects for improvement. Monograph. Kyiv, 2022. 246 pgs.

The publication is intended for public servants, employees of legislative, executive and judicial authorities, local self-government bodies, scientists and students of law faculties of higher educational establishments, as well as for all, who are interested in this issue.

The monograph substantiates the theory and practice of the current state and prospects for improvement of the constitutional jurisdictional process in Ukraine, including its doctrine and research methodology, legal regulation, concepts, features, principles, stages, subjects, problems of implementation, effectiveness as a means of protecting constitutional human and citizen's rights and freedoms, as well as develops on this basis provisions, summaries, conclusions, recommendations and proposals aimed at its optimization, in particular by introducing a number of changes to the national legislation on the jurisdictional activities of the Constitutional Court of Ukraine.

The analysis of doctrinal sources, which describe this problem, gave grounds to divide them into two groups: 1) those devoted to the activities of the Constitutional Court of Ukraine as a body of constitutional jurisdiction, containing doctrinal approaches to certain procedural aspects, mainly considering constitutional jurisdiction as a component of constitutionalism; 2) those devoted directly to the constitutional jurisdictional process, considering it as one of the types of jurisdictional process, as a component of legal or constitutional processes. It is substantiated that certain doctrinal aspects of the constitutional jurisdictional process are reflected in the practice of the Constitutional Court of Ukraine, in particular in the legal positions set out in its decisions, conclusions and rulings, as well as in some opinions of judges of the Constitutional Court of Ukraine.

It is proved that the concept of «constitutional jurisdictional process» was practically not used in doctrinal sources both before and after 2016, although they contain a description of the main essential characteristics of the procedural activities of the Constitutional Court of Ukraine. The authors used such concepts as «constitutional jurisdiction», «constitutional justice»,

«constitutional control», «constitutional proceedings» and others to refer to these activities.

It is established that the methodology of scientific research of the constitutional jurisdictional process is a set of principles, approaches and methods that provide evidence-based and true knowledge about its current state and prospects for improvement. Conducting a scientific research of the constitutional jurisdiction process required a comprehensive approach, which was ensured by the use of classical traditional and innovative methods, as well as the implementation of general scientific, special scientific and legal methods.

The legal regulation of the constitutional jurisdictional process, which is currently carried out by the Constitution of Ukraine, the Law of Ukraine «On the Constitutional Court of Ukraine» of July 13, 2017, № 2136–VIII and the Rules of Procedure of the Constitutional Court of Ukraine, adopted at a special plenary session of the Constitutional Court of Ukraine by the Resolution of the Constitutional Court of Ukraine of February 22, 2018, № 1-ps/2018 (as amended by the Resolution of the Constitutional Court of Ukraine of September 11, 2018, № 4-ps/2018) was analysed. The legal positions of the Constitutional Court of Ukraine can also be considered as a source of legal regulation of the constitutional jurisdictional process, which, as a specific source of law, along with the above acts, affect the procedure for exercising jurisdictional powers of the Constitutional Court of Ukraine. It was also noted that the draft Law on Constitutional Procedure (on constitutional proceedings) (Reg. № 4533 of December 21, 2020) plans to regulate certain procedural aspects of the Constitutional Court of Ukraine's activities in more detail. It is emphasized that the analysis of international experience allows to argue about slightly different approaches to the choice of the model of legal regulation of the constitutional jurisdictional process. At the same time, it was stated that the current model of legal regulation in Ukraine (Constitution, Law, Rules of Procedure) meets international standards.

The multifaceted legal nature of the constitutional jurisdictional process is substantiated. Thus, first of all, it is a kind of jurisdictional process as one of the forms of legal process, as well as an element of the constitutional process as a component of the legal process. In a broad sense, the constitutional jurisdictional process is considered as a set of

consistent and logically interrelated stages, based on the relevant principles of the Constitution, laws and other regulations of Ukraine and aimed at ensuring the supremacy of the Constitution of Ukraine, within which procedural relations between body of constitutional jurisdiction and other authorized subjects arise, terminate and change; and in the narrow sense it is considered as a procedural order for consideration and decision of cases by the body of constitutional jurisdiction within its competence, namely constitutional proceedings. A broad understanding of the constitutional jurisdictional process is fundamental, most important, as it reflects its main formal, essential and substantive features. Its principles, stages and subjects are recognized as the main components of the constitutional jurisdictional process.

It is stated that the specifics of the constitutional jurisdictional process in Ukraine in relation to other sectoral types of jurisdictional processes (criminal, civil, economic, administrative) are insufficiently studied. The characteristic features that distinguish the constitutional jurisdictional process from other jurisdictional processes are highlighted.

It was found that the principles of the constitutional jurisdictional process are the most general, conscious-volitional, normative-regulatory or doctrinaire, basic rules of conduct of the subjects of the constitutional jurisdictional process, demonstrating its essence, content and social purpose. It is expedient to distinguish the principles of the constitutional jurisdictional process into normative and doctrinal ones. The normative principles are the following: a) the rule of law; b) independence; c) collegiality; d) publicity; e) openness; f) full and comprehensive consideration of cases; g) reasonableness; h) binding decisions and conclusions; i) friendly attitude to international law. The doctrinal principles of the constitutional jurisdictional process include all the principles that could be the basis of the procedural activities of the Constitutional Court of Ukraine, which are not enshrined in law, but reasonably highlighted in doctrinal sources, including the principles of competitiveness, dispositiveness, proportionality, equality of arms before the law and the court, consistency. The latter can become the basis for the further formation of the official constitutional doctrine.

The stages of the constitutional jurisdictional process are singled out and characterized, their correlation with the stages of the constitutional proceedings is demonstrated. The stage of the

constitutional jurisdictional process defines separate procedural legal relations, which have independent significance for the applying of the relevant subjects to the Constitutional Court of Ukraine, opening, considering, resolving the case on the said appeal, making a decision or providing an conclusion, publishing and enforcing it.

It is defined that each stage of the constitutional jurisdictional process includes certain phases. The stages and phases of the constitutional jurisdictional process can be divided into three blocks: pre-trial, judicial (basic and optional) and extra-judicial (basic and optional). Based on the above, it was found that the complex structure of the constitutional jurisdictional process consists of the following stages and phases: 1. Pre-trial: a) submission of constitutional petitions, constitutional appeals and constitutional complaints; b) preparation of case materials by the judge-rapporteur for consideration by the panel. 2. Judicial: 2.1. Basic: a) resolving the issue of opening (or refusing to open) constitutional proceedings; b) preparation of case materials by the judge-rapporteur; c) consideration of the case at the plenary session of the Senate or the Grand Chamber; d) making a decision, providing an conclusion; 2.2. Optional: a) withdrawal (recusal) of a judge; b) refusal to initiate constitutional proceedings in the case; c) closing the constitutional proceedings in the case; d) unification or separation of constitutional proceedings; e) issuance of a security order; f) official promulgation of acts; g) preparation of a separate opinion on the act by the judge; h) elimination of errors in the text of the act; i) explanation of the procedure for execution of the decision, conclusion of the Constitutional Court of Ukraine. 3. Extra-judicial: 3.1. Basic: a) official publication of acts on the official website; b) publication of acts in the Bulletin of the Constitutional Court of Ukraine and other official printed publications; c) monitoring the state of implementation of decisions and compliance with conclusions. 3.2. Optional: a) ensuring control over the implementation of the decision, compliance with the conclusion of the relevant state bodies; b) a request from the relevant authorities for written confirmation of the execution of the decision, compliance with the conclusion; c) prosecution in accordance with the law for non-execution of the decisions and non-compliance with the conclusions of the Constitutional Court of Ukraine.

It is established that the subjects of the constitutional

jurisdictional process in a broad sense are: 1) the Constitutional Court of Ukraine, which operates at the Grand Chamber, Senates and Boards, as well as its bodies and officials performing auxiliary functions; 2) subjects of appeal to the Constitutional Court of Ukraine and authorities or officials who have adopted or signed legal acts, the constitutionality of which is challenged, as well as their representatives; 3) subjects that promote objective, full and comprehensive consideration of the case and subjects that submit to the Senate or the Grand Chamber written substantiated legal opinions (*amicus curiae*) on issues submitted to the Constitutional Court of Ukraine. The subjects of the constitutional jurisdictional process operate at different stages and have different procedural status, which may change depending on the stage.

It is concluded that as a result of the constitutional reform of justice in 2016, the jurisdictional powers of the Constitutional Court of Ukraine were changed and it has already developed some practice regarding their implementation. The main problems that arise in the exercise of jurisdictional powers by the Constitutional Court of Ukraine are described. It is established that the solution of these problems, depending on their nature, is possible by amending the regulations governing the procedural activities of the Constitutional Court of Ukraine, raising legal awareness of the subjects of appeal to the Constitutional Court of Ukraine and other ways and means indicated and justified in monograph.

It is proved that the constitutional jurisdictional process is a remedy of protecting the constitutional rights and freedoms of man and citizen. The direct remedy of such protection is the consideration of constitutional complaints by the Constitutional Court of Ukraine, and the indirect remedy is the consideration of constitutional petitions and constitutional appeals. The effectiveness of this remedy depends, in particular, on the perfection of regulations of the constitutional jurisdictional process, and the main problems are the implementation of decisions of the Constitutional Court of Ukraine by the Verkhovna Rada of Ukraine and the possibility of restoring violated rights of persons after the Constitutional Court of Ukraine decided in their favour.

The practical proposals and recommendations aimed at improving the constitutional jurisdictional process are substantiated and formulated. in particular: a) consolidation of the draft Law on Constitutional Procedure (on constitutional

proceedings) (Reg. № 4533 of December 21, 2020) and the Law of Ukraine «On the Constitutional Court of Ukraine» of July 13, 2017, № 2136–VIII for the existence of a unified systematized act, which would contain the rules of material and procedural law in certain sections; b) amendments to Art. 2, 37, 61, 67, 68, 69 of the Law of Ukraine «On the Constitutional Court of Ukraine» of July 13, 2017, № 2136–VIII concerning: normative consolidation of the principle of consistency of legal positions of the Constitutional Court of Ukraine as a basis for formation of the official constitutional doctrine; ensuring the possibility for the Senate to review the decision of the board to refuse to open constitutional proceedings in a case on a constitutional complaint by analogy with the relevant procedure in cases on a constitutional petition or constitutional appeal; remedy the situation when, depending on the form of appeal to the Constitutional Court of Ukraine, different bodies (Grand Chamber or Senate), acting in different quantitative composition, may make final decisions on compliance with the Constitution of Ukraine (constitutionality) of the law of Ukraine, that have similar force and consequences; improvement of the procedural institute of the special adviser of the Constitutional Court of Ukraine as a subject of the constitutional jurisdictional process; c) granting the Constitutional Court of Ukraine the right to apply for advisory opinions to the European Court of Human Rights; d) application of constitutional liability for non-execution of the decisions of the Constitutional Court of Ukraine; e) the need for a comprehensive legislative settlement of the issue of validity of acts of the Constitutional Court of Ukraine and the possibility of restoring the violated rights of persons in the courts of Ukraine after the Constitutional Court of Ukraine decided in their favour; f) the need to regulate the procedure for compensation for material and moral damage caused to natural or legal persons by acts and actions deemed unconstitutional by a special law.

Key words: constitutional jurisdictional process, constitutional trial process, constitutional jurisdiction, constitutional justice, constitutional control, constitutional proceedings, Constitutional Court of Ukraine.

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