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JURISDICTION OF THE CONSTITUTIONAL COURT OF UKRAINE

At the present stage of development of state legal relations in Ukraine the issue of crossing the spheres of influence of legal institutions, in particular involuntary or deliberate overlapping of powers of judicial institutions, is becoming increasingly important. The Constitutional Court of Ukraine (the CCU) is a direct participant in such discussions.

The purpose of the paper is to examine the essence of the jurisdiction of the CCU and its possible modifications in accordance with the norms of the Ukrainian legislation.

The proposed theme has repeatedly been the subject of analysis and discussion by Ukrainian constitutional scholars: S.S. Alekseev, S.V. Golovaty, V.L. Musiyaki, V.F. Pogorilko, P.M. Rabinovich, M.V. Savchina, P.B. Stetsyuk, S.V. Shevchuk, Yu. S. Shemshuchenko and others.

In the conventional sense, jurisdiction is the competence of authorized public authorities to consider and resolve certain cases. Thus, the notion "jurisdiction" inevitably overlaps with the notion "authority", which is the main component of the competence of authorized public authorities [1, p. 116]. Savchyna M.B. proves that constitutional jurisdiction should be considered exclusively in relation to the notions of constitutional justice and proceedings, since the jurisdiction of the CCU is the material basis of the relevant justice and is a prerequisite for the formation of constitutional justice. However, this type of combination is not appropriate, as, for example, the interpretation of the Constitution does not directly relate to the judicial process [2, p. 74].

In accordance with Part 2 of Art. 124 of the Constitution of Ukraine, the jurisdiction of courts extends to any legal dispute and any criminal prosecution, and in cases stipulated by law, courts resolve other cases as well [3]. Regarding the CCU, we should note that its jurisdiction is exclusively constitutional. Pohorilko V. concluded that the CCU, along with the courts of general jurisdiction, is an independent type of state power – an independent judiciary [4, p. 556-557]. The fact that the CCU is the only body of constitutional jurisdiction in Ukraine is confirmed by the existence of a separate section in the Constitution. Part 1 of Art. 147 of the Basic Law states that the CCU decides on the compliance of the Constitution with the laws of Ukraine and, in the foreseeable cases, gives an official interpretation of the Constitution of Ukraine, decides other issues stipulated by the Constitution [3].

According to the Law of Ukraine "On the Constitutional Court of Ukraine" of 13.07.2017 updated on 20.03.2020, the CCU makes decisions and gives conclusions only in cases regarding the following: constitutionality of laws and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea (p.1 p.1 Art. 7); official interpretation of the Constitution and laws of Ukraine (p.2 p.1 Art.7); resolution of issues on compliance with the Constitution of Ukraine and the laws of Ukraine (p.8 p.1 art.7); resolution of issues on compliance with the Constitution of Ukraine (constitutionality) of laws of Ukraine (their separate provisions) on the constitutional complaint of a person who considers that the Law applied in the final court decision on his/her case contradicts the Constitution of Ukraine (p.9 p.1 Art.7), etc. The same law clearly states actions that exceed the limits of the authorities of the court. P.3. Art. 8 of the Law indicates that the court does not consider the issue of compliance with the laws of Ukraine with the acts of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, acts of other state authorities, authorities of the Autonomous Republic of Crimea and local authorities [5].

Despite the fact that the above mentioned circle of court's authority is specified in the law as a part of the powers, most scientific researchers identify a little more narrowed list of such cases, as a part of competence. Thus, it proves that the extent and degree of overlapping of the notions "authority" and "competence" directly depend on the subjective factors.

Taking into account the flexibility of the Ukrainian legislation, some scientists emphasize the necessity for creation the fourth branch of government that would exercise supervision and would be based on the bodies of constitutional jurisdiction dealing with wider range of issues. But, most scientists have conservative points of view, believing that such change would be inappropriate (if the CCU expanded its competence, it would deal with cases of courts of general jurisdiction. It would lead to confusion in some parts of the legislation, imposing appropriate competencies and losing the peculiarities of the CCU) [6, p. 506]. Nevertheless, focusing on the experience of foreign countries, we can consider two trends of further development of the authorities of the CCU. The first trend is to remain the circle of the formally approved jurisdiction unchanged, the second one - to expand its competence taking appropriate decisions independently in connection with current objective needs of modern society [7, p. 91-92].

To conclude, the jurisdiction of the CCU is absolutely unique. The CCU is the only body of constitutional jurisdiction in the state. Exercising its judicial functions directly, the Court is guided primarily by the rule of law. It should be noted that the Law of Ukraine "On the Constitutional Court of Ukraine" functions on the basis of this legal "axiom" and does not contradict the norms of the Basic Law. With the adoption of a new version of law, the jurisdiction of the CCU has been changed expanding its range of issues. Currently, there are many new ideas on modifying the jurisdiction of the CCU, which are becoming more and more up-to-date due to emergence of new needs of the Ukrainian society. Such ideas must be considered and approved at the legislative level.

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