

Decisions of the Organs of Constitutional Justice as a Rule of Law

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Abstract

The tasks of research are: the selection of properties of the rules of law in the decisions of the organs of constitutional control; consolidation of decisions of the bodies of constitutional justice in relation to most important issues of the rule of law within Russian theory of constitutional law. The main methods of research are scientific methods, such as analysis method and comparison method, which allowed us to identify similarities and differences between rules of law and the decisions of the constitutional justice, and to formulate specific theoretical and practical conclusions and suggestions for further development of the Russian legal system. In this article the author reveals that the decisions of the constitutional (charter) courts include such elements of the legal norm, as a hypothesis and disposition, and even the sanction. The author comes to the conclusion that the rules of law contained in the decisions of the constitutional (charter) courts, have some distinctions. They are interpretive in nature, may be found in different parts of the decisions of the constitutional justice, and act not only from the time of decision making, but also, in certain cases, cover the relations, which have arisen prior to their adoption. The author also proposes a number of amendments to the Federal Constitutional Law on the Constitutional Court.

Keywords: Legal position, court decisions, the constitutional court, constitutional justice, constitutional law, the Russian legal system, a source of law.

1. Introduction

The question about the normative nature of decisions of the constitutional control is under discussion in Russian theory and practice of constitutional justice.

In the legislation of several states a definite answer is given to the question of the legal nature of acts of the constitutional control bodies. For example, according to article 94 of the Basic law of the Federal Republic of Germany, the decision of the Federal constitutional court has the same legal force as the law in the case of direct reference to it in legislation. In Lithuania, Kazakhstan, Belarus, Azerbaijan, decisions of the constitutional control bodies are also officially recognized sources of the law in the form of rule of law.

Let us consider this problem at the regional level. L. V. Lazarev believes that the decisions of the constitutional (charter) courts of the Russian Federation territorial entities take on the characteristics of normative acts, because such acts were directed not only to establish but to change and repeal the law or change their scope (Lazarev, 2006).

In accordance with article 75 of the Law of the Republic of Mari El from March 11, 1997 No. 14-W "On the Constitutional court of the Republic of Mari El" the decision of the constitutional court of the Republic of Mari El is final, cannot be appealed and comes into force immediately after its proclamation. The decision of the Constitutional court of the Republic of Mari El is directly applicable and does not require confirmation by other authorities and officials. The same rules exist in other laws on constitutional (charter) courts of the Russian Federation territorial entities.

Thus, decisions of the constitutional justice bodies are the norms of law, with the following properties: 1) the obligation of the decision of constitutional court on the entire territory of the Russian Federation or the Russian Federation territorial entity; 2) the finality of the decision of constitutional court, which is final and cannot be appealed; 3) the immediacy of the decision of constitutional court; 4) irresistibility of the decisions of the constitutional (charter) court (legal force of the decision cannot be overruled by a duplicative adoption of the same act) (Ebzeev, 2007).

In addition, decisions of the constitutional control bodies have the same scope in time and number of persons, as decisions of rule-making body; designed for repeated use; influence the legal system as a whole.

2. Hypothesis

Therefore, the author considers the question of the possibility of recognition of decisions of the constitutional control

bodies on most important issues about the interpretation of the constitutions (statutes), on the recognition of normative acts or their parts corresponding or not corresponding to the constitutions (statutes), according to the results of consideration of disputes about competence among state bodies as the norm of law.

3. Methods

The tasks of research are: the extraction of the rule of law properties in the decisions of the constitutional control bodies; consolidation of decisions of constitutional justice bodies on the most important issues within Russian theory of Constitutional law as the rule of law.

Methodological basis of the research consists of the set of scientific knowledge methods. In the course of writing this scientific work different methods were applied. The author uses general scientific methods: the scientific analysis (the analysis of theoretical sources), a synthesis method, system and structural analysis, a method of generalization of the received materials on the studied subject, structurally functional, historical, as well as private scientific methods: technical and legal, comparative, formal – legal.

Their use allowed us to identify similarities and differences between norms of law and the decisions of the constitutional justice bodies, as well as to formulate specific theoretical and practical conclusions and suggestions for further development of the Russian legal system.

4. Results

However, all decisions of the constitutional justice bodies are not normative acts. Constitutional (charter) court only determines the obligatory rules of conduct through interpretation of regulations, while the legislator establishes obligatory rules of conduct. The decisions of the constitutional (charter) courts clarify the content of the rules of law under check, overcome conflicts between rules of law, reveal a systematic relationship between them, affecting significantly the legal regulation.

Thus, the legal facts and the contested norms set forth in the reasoning part should be considered as a casual hypothesis of the legal norm. The behavior of relevant subjects of law, proposed by constitutional (charter) court, will be the disposition of legal norms, and the final conclusion, contained in the operative part of the decision, will be the sanction. The final conclusion about the constitutionality of the act can be regarded as a sanction with positive content.

5. Discussions

In the Republic of Belarus, acts of the Constitutional Court are defined as normative. One should pay special attention to the fact that not all acts of the Constitutional Court of the Republic of Belarus are of normative character, but only acts adopted by the Constitutional Court in a subsequent constitutional control, the decisions made in the order of obligatory preliminary review, and decisions on elimination of legal gaps, collisions and legal uncertainty.

In accordance with Article 2 of the Law of the Republic of Belarus "On normative legal acts of the Republic of Belarus" the acts of the Constitutional Court, along with the resolutions of the Plenum of the Supreme Court and the Supreme Economic Court, are defined as the normative legal acts adopted within its competence on the regulation of social relations established by the Constitution of the Republic of Belarus and adopted in accordance with other legislative acts.

Consequently, it is possible to agree with the position of the legislator of the Republic of Belarus and to recognize the decisions of the constitutional (charter) courts on most important issues about the interpretation of the constitutions (statutes), on the recognition of normative acts or their parts corresponding or not corresponding to the constitutions (statutes), according to the results of consideration of disputes about competence among state bodies as the norm of law.

First of all, the normative nature of decisions of the Constitutional Court of the Republic of Belarus is manifested in legal positions. However, in the legislation of the Republic of Belarus, as well as in Russian, the definition of the term "legal position of the Constitutional Court" does not exist.

For the first time in the Russian legislation the concept of "legal position" appeared in the Federal constitutional law of 21 July 1994, No. 1-FKZ "About the Constitutional Court of the Russian Federation". Article 73 of this Law contains a provision stating that "...if the majority participating in the meeting of the chamber of judges are inclined to necessity to make a decision that does not correspond to the legal position expressed in the earlier decisions of the Constitutional Court of the Russian Federation, the case is transferred for consideration in plenary session. However, this article was excluded from the text of the Law in 2010. But the phenomenon itself has been preserved.

A debatable question arises on the recognition of legal position of the constitutional justice in the function of the rule of law.

Currently, the Constitutional Court and the constitutional (charter) courts of the Russian Federation territorial entities take decisions on the basis of legal positions, make final conclusions on the interpretation of the Constitution (charter), abstract or concrete norms of control, etc.

1. By estimate of Gadzhiev G. A., a judge of the constitutional Court of the Russian Federation, the legal position of the Constitutional Court are "important legal conclusions, ideas, that represent identified by the court crystallized law, source of law, legal principle, suitable for solving of similar legal conflicts" (Gadzhiev, 2013, 1999).

V. A. Kraskov believes that the legal position of the Constitutional Court is "the logical and legal basis of the final conclusion of the Court included into operative part of its decision, made in the form of legal reasoning, with obligatory meaning" (Kryazhkov, 2005).

G. A. Gadzhiev, L. V. Lazarev, V. A. Kraskov indicate legal normalization as an essential characteristic feature of legal position of the Constitutional Court. They consider the legal position of the Court to be a source of law, but not the solutions. However, B. A. Starsun, V. I. Sukhinin do not share their opinion.

Note that the final decision (conclusion in the operative part of the decision of the constitutional court) and the position are inseparably connected with each other, because the legal position may be both in a reasoning part and in operative part of the decision.

Only the final decision, contained in the operative part, acts as the rule of law, a normative act of which is deemed unconstitutional.

Also another feature, that makes legal position similar to the norm of law, is extension of the act of legal position on similar cases.

This feature is manifested, in particular, when the decision on discrepancy of normative act with the Constitution, is applied not only to this act, but on the acts based on it, or reproducing it, or containing the same provisions which were the subject of appeal.

It also concerns the fact that legal position, in contrast to the decisions of the constitutional justice bodies, may be reviewed.

Moreover, all legal positions of the constitutional justice bodies are obligatory for execution irrespective of a type of decisions in which they are contained (Gábor, 2012).

However, in our opinion, it is impossible to speak about equal legal force of legal positions and decisions of the constitutional justice bodies. Russian legislator evaluates the legal effect of the legal positions of these courts in a different way. Article 80 of the Federal constitutional law "On the Constitutional Court of the Russian Federation" establishes the obligation of state bodies and officials to bring laws and regulations into conformity with the Constitution of the Russian Federation in connection with the decision of the Constitutional Court. This article provides responsibility of the legislative body of state power of Russian Federation territorial entity and the Supreme official of the Russian Federation territorial entity. Responsibility comes, if the authority after publication of the Constitutional Court decision has not overturned recognized unconstitutional normative act, has not adopted a new regulation or modified and (or) added to the normative act, recognized as unconstitutional in its separate parts.

In accordance with part 2 of Article 71 of this Law, the final decision of the Constitutional Court about checking the conformity to the Constitution of the Russian Federation normative acts is called resolution. Therefore, responsibility is carried out for non-performing of resolutions of the Constitutional Court, but not for non-performing its legal positions in any way.

We support V. A. Kraskov who claims that "legally binding, apparently, some of the legal positions, namely those, that are spelled out in the decisions interpreting the Constitution (they are compulsory), and those, contained in the operative part of other decisions in relation to conclusions of their motivation part. Other positions possess legally orienting and coordinating meaning.

6. Conclusion

1. Consequently, not all of the legal positions can be considered as the rule of law, but only those, which are stated in the decisions interpreting the Constitution and contained in the operative part of any decisions in relation to conclusions their of motivation part. Sometimes, it seems to be impossible to perceive and therefore to apply consciously comprehensive, logical argumentation of the final conclusion contained in the operative part of the decision without substantial justification, identifying, definitive legal norms and principles. This legal

position ensures the consistency of the system of law and uniform law enforcement practice.

The legal position contained in the operative part of the decisions in relation to the conclusions of the reasoning part becomes the basis for future legal regulation. It is a reference point in the legislative process and in the activities of all bodies of state power and local self-government.

A similar situation is observed in the Republic of Kazakhstan. Legal positions of the Constitutional Council of the Republic of Kazakhstan in the operative part of the regulatory resolution acquire the character of constitutional and legal rules that are close in structure and content to classical legal norms, i.e. norms of law.

Thus, the legal position contained in the decisions of the constitutional justice bodies about the content of constitutional norms and legislation, embodied in the operative part of the judgment and acting as an obligatory standard of adequate understanding of the meaning of the constitutional and legislative norms are, in fact, the rules of law (Abdrasulov, 2013).

2. Under legal positions should be understood part of the decision of constitutional justice body, containing the consolidation of a special kind of normalization, which serves as a model for solving issues arising in the future, in which the conclusions reached by the judges of the Constitutional Court, the constitutional (charter) courts at the case in question, backed up by specific reasons. Legal positions both in one and in several important issues can be expressed in the decision. Moreover, the legal position can be expressed in any part of the various types of decisions of the constitutional (charter) courts (Sidorov, Mokoseeva, Mikheeva, 2015).
3. The legal positions of the constitutional control bodies, as well as decisions themselves, are of normative binding character. They have the same legal force and binding on the entire territory of the Russian Federation.
4. The decisions of the constitutional (charter) courts and legal positions are sources of constitutional law of the Russian Federation. They combine the properties of different types of sources of law, but at the same time, can't be referred to any of them to the full extent. They contain legal norms as well as individual legal acts. Therefore, we believe that the decisions of the Constitutional Court of the Russian Federation, constitutional (statutory) courts of Russian Federation territorial entities and legal positions which they contain, represent a special kind of sources of constitutional law of the Russian Federation. Legal force of decisions of the Constitutional Court of the Russian Federation exceeds the legal effect of any act, except the Constitution of the Russian Federation. The decisions of the constitutional (charter) courts of Russian Federation territorial entities are in second place in the system of sources of law of Federation territorial entities after the constitution (charter) of the corresponding territorial entity.
5. Currently we can state an ambivalent attitude to acts of the constitutional justice bodies, due to the lack of legislative regulation of their place in the legal system of the Russian Federation. To resolve this contradiction, we consider it necessary to amend the Law "On the Constitutional Court of the Russian Federation" and the laws about constitutional (statutory) courts of Federation entities. They should secure that the decisions of the Constitutional Court of the Russian Federation, constitutional (statutory) courts of the Russian Federation entities represent the rule of law adopted in the implementation of constitutional justice, which has a special legal form aimed at regulation of public relations. Decisions of the constitutional justice bodies and the legal positions are provided with the compulsory force of the state, create, modify, and terminate the validity of legal norms. They are characterized by normative and interpretative nature, generality and obligatoriness to the public.
6. The decisions of the Constitutional Court of the Russian Federation and constitutional (charter) courts possess such elements of legal norms, as hypothesis, disposition and sanction.
Note that sanctions may not be included into the decisions of the constitutional justice bodies, which, however, does not deprive them of the property of a normalization as a legal norm may exist in the absence of any element, and various elements of legal norms can also be contained in various legal acts (Pantelev, 2012).
7. The normalization of the Constitutional Court decisions, the constitutional (charter) courts connected with the coverage of norms the law contained in those decisions in time, space and number of people. In time the decisions of the constitutional justice are valid from the moment of their adoption, but sometimes the Constitutional Court of the Russian Federation, constitutional (charter) court of the Russian Federation entity provides a retroactive effect of its decisions for a complainant. The effect of decisions of the Constitutional Court of the Russian Federation extends over the whole territory of the country. Decisions of the constitutional (charter) courts of the Russian Federation entities cover, as a rule, the territory of the corresponding subject. The question of the effect of the decisions of the Constitutional Court of the Russian Federation with respect to the persons is described in article 6 of the Federal constitutional law "On the constitutional Court of the

Russian Federation", which states that its decisions are obligatory for all representative, executive and judicial bodies of state power, bodies of local self-government, enterprises, institutions, organizations, officials, citizens and their associations. Similar provisions are also contained in the legislation of the territorial entities of the Russian Federation (Kokotov, 2013).

8. The right of supervision over execution of decisions of the Constitutional Court of the Russian Federation, constitutional (charter) courts should be vested with the prosecution authorities. For this purpose the law on the public prosecutor's office must confirm the right of prosecutors to appeal against legal acts based on the provisions of the law or another act, declared unconstitutional or reproducing them, and to reveal the decisions of the courts based on the unconstitutional law.

In addition, it is necessary to set specific time limits for consideration of the legislature of the bill for bringing the normative act, recognized by the constitutional justice bodies as unconstitutional, into conformity with the Constitution of the Russian Federation, constitutions (charters) of the Russian Federation entities and also to define clearly the number of persons obliged to initiate legislation in this case.

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