

филологический и социальный аспекты понятия тайны, выделяются ее основные правовые характеристики. Проведенный в статье терминологический и сущностный анализ понятия тайны дает возможность использовать понятие информации как методологически отправное при определении юридических видов тайн. Дальнейшее использование синтеза таких подходов дает возможность выяснить, что отличает один вид тайны в информационном отношении от других ее правовых разновидностей.

Ключевые слова: информация, тайна, правовые виды тайн, эссенционный подход, методология исследования.

Olijnyk V. Methodological Fundamental Concepts of the Legal Forms of Secrecy. The article reveals which concepts are fundamental for the legal types of secrecy employed by various branches of law, in particular: «state secret», «personal privacy», «medical secrecy», «commercial secrecy», etc. The argues his opinion by claiming that all these legal terms are a generic concept of secrecy, the foundation of which, in its turn, is the concept of information (knowledge/statements). In the focus of attention are legal, philosophical, philological and social aspects of the concept of secrecy and the article highlights its basic legal characteristics. The above mentioned in the article terminological and the essential analysis of the concept of secrecy makes it possible to use the concept of information as a methodological starting point in determining the types of legal secrets. Further use of such approaches synthesis provides clues to understanding of what distinguishes one kind of secrecy from the other legal secrecies in view of information concept.

Key words: information, secret, legal types of secrecy, essential approach, research methodology.

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I. Kononchuk

Impact of Constitutional Justice on the Development of Ukrainian Constitutionalism

This article investigates the emergence and establishment of the institute of constitutional justice in Ukraine and its impact on the development of constitutionalism on the basis of analysis of regulations and the constitutional and legal doctrines, presented in the works of Ukrainian scientists and state experts. The peculiarities of formation of constitutional justice in different historical periods were characterized, while the main stages of its formation were identified. The article specifies that the Constitutional Court of Ukraine plays an important role in the system of Ukrainian constitutionalism.

Key words: constitutional control, constitutionalism, the Constitution of Ukraine, the Constitution of the USSR, the Constitutional Court of Ukraine.

Formulation of the scientific problem and its significance. Constitutional justice plays a particularly important role in the development and operation of constitutionalism, because of the specific constitutional and legal status and competence of the Constitutional Court of Ukraine, as the sole body of constitutional jurisdiction in Ukraine. Thus, the Constitution of Ukraine is the main object of constitutional justice, while the main task of the Constitutional Court of Ukraine is to guarantee the supremacy of the Constitution of Ukraine, as the Fundamental Law of the State on the whole territory of Ukraine.

The analysis of the researches on this problem. The following national jurists and scientists researched some theoretical and practical aspects of formation and development of the institution of constitutional justice and constitutionalism in Ukraine: V. O. Herheliynyk, V. M. Campo, A. R. Krusyan, O. M. Mironenko, M. D. Savenko, A. O. Selivanov, V. E. Skomorokha, I. D. Slidenko, I. E. Slovka, V. Y. Tacij, M. V. Teslenko, T. O. Tsymbalisty, V. M. Shapoval and others.

The formulation of the aim and objectives of the study. The purpose of this article is to study the origins and formation of the institute of constitutional justice in Ukraine and its impact on the development of Ukrainian constitutionalism.

The presentation of the main material and justification of the results of the study. The formation of the institute of constitutional justice in Ukraine was held in the difficult historical conditions, because Ukraine did not have its statehood for a long time and its territory belonged to the other states for several centuries. The actual establishment of the institute started only since Ukraine gained its independence.

The Constitution of Pylyp Orlyk was approved on April 5, 1710, and it contained provisions that separated the state power into legislative (belonged to the Council that was convened three times a year and whose members were the colonel and his officers, sotnyks, «general councilors from all regiments» and «ambassadors of the Zaporozhian Lower Cossack Host»), executive (Hetman) and court (the General court). The constitution diminished the power of the Hetman of Zaporizhian Cossacks, and he was considered as the guarantor of rights and liberties of the people. The general officers, colonels and general counsels controlled the execution of the power by Hetman, but could not apply specific sanctions to him. The Article 7 of the Constitution stated that judiciary power should be separated from the other organs of state power, and proclaimed its independence in decision-making and its obligatoriness [1]. The ideas of the natural law theory and the separation of state power were put in the base of the Constitution of Pylyp Orlyk. The provisions of the Constitution were not implemented, although it formally acted on the Right-Bank Ukraine up to 1714.

Ideas for the introduction of constitutional justice in the 18th century – early 20th century were reduced only to the constitutional projects, which were not implemented on practice. The works of the following Ukrainian scientists were very important during the formation of the national doctrine of constitutional justice: I. Petrunkevich, who proposed an innovative idea of the Constitutional Court, and who discussed the benefits of monitoring the constitutionality of laws and other regulations by the special judicial body; M. Drahomanov, who stressed the importance of the special procedure for amending the Constitution, and who partially outlined the issue of constitutional jurisdiction; S. Dnistriansky, who claimed that the state should set up a special system of protection of the Constitution in order to prevent unreasonable (arbitrary) change to its provisions, and who advocated the need for the State Court Tribunal, with the power to check the laws for their constitutionality, and to remove the laws that contradict the Constitution [2, p. 98–99].

On April 29th, 1918, the Central Council accepted UNR Constitution, which declared Ukraine as a self-consistent, sovereign, and independent state. The organization of the government under the Constitution is based on the principles of the power separation; National Council is declared as the legislative body, which forms the other branches of government; the supreme executive power belongs to the Council of Public Ministers, and the highest judicial authority is the General Court. The Constitution provides a special procedure for amending the Basic Law, the responsibility of ministers and temporary restrictions on rights and freedoms, but the body of constitutional review is not defined [3]. In the Western Ukrainian People's Republic, which emerged in late 1918 as a result of the Austro-Hungarian Empire collapse, the idea of the constitutional review formation was not supported.

Considering the establishment of the constitutional justice in Ukraine, it is important to mention Eastern Galicia, Transcarpathia, Northern Bukovina, and South Bessarabia, on the territory of which the Constitutions of Poland, Czechoslovakia and Romania operated. Central and Eastern parts of Transcarpathia with the official title «Carpathian Rus», according to the Saint-Germain Peace Treaty of September 10th, 1919 and the Trianon Peace Treaty of June 4th, 1920, are included in Czechoslovakia as a separate autonomous administrative-territorial unit. Subcarpathian Rus is Ukrainian territory that functioned for the first time in Ukraine under the jurisdiction of the latest European constitutional court. The Constitution of Czechoslovakia gave the right to the not yet existing Sejm of the Subcarpathian Rus to make laws on language, education, religion, local government, and other matters, specified by the laws of the Czechoslovak Republic. These laws, on the requirements of the Constitution, were subject to the jurisdiction of the Constitutional Court of Czechoslovakia and fairly rigid political control by its president, who was endowed with the exclusive right to sign these acts, and the governor, appointed by the same president on the proposal of the government. The European model of constitutional review was established in Subcarpathian Rus [4, p. 90].

Eastern Galicia was influenced by Poland in the interwar period. According to the Polish Constitution, of 1921, the representatives of Ukrainian lands were Sejm deputies and senators that ensured compliance with laws, approved by Polish Constitution and exercised effective constitutional control over the activities and acts of the President, the Council of Ministers, and the individual members of the government. However, after the Constitution of 1935, all the public authorities in Poland and, therefore, in Eastern Galicia, became completely subordinate to the president.

The areas of Northern Bukovina and Southern Bessarabia in 1920–1930's of the XX century were a

part of Romania, where the U.S. version of constitutional review was established, involving the highest court of general jurisdiction. The Cassation Chamber, as the supreme general court of Romania, had the exclusive right to recognize unconstitutional laws (but only in a casual manner), but the court was not entitled the right to examine for compliance with the Constitution decrees of the King and other executive bodies. Formally, the administrative justice was entitled for such actions, but usually it was applied mainly to acts of departments, communities, cities, but not to the organs of higher authority. In 1938, King Carol II made a coup. Having established his dictatorship, he introduced anti-democratic constitution that significantly narrowed the rights and freedoms of citizens, and dissolved Parliament. In September 1940, the royal dictatorship in Romania was replaced by Germany-focused fascist type dictatorship [4, p. 93].

In Eastern Galicia, Transcarpathia, Northern Bukovina, Southern Bessarabia different models of constitutional control are introduced, however, due to the difficult political situation, the institute is not fully formed.

For a long time the Bolshevik power was set in the Eastern (starting from 1919), and later in the Western parts (starting from 1939) of Ukraine. Constitutions of Soviet Ukraine (1919, 1929, 1937, and 1978) fully reproduced the structure and provisions of the Constitution of the USSR. There was no complete constitutional review during the Soviet period in Ukraine. On March 14th, 1919, the III All-Ukrainian Congress of Soviets in Kharkov adopted the first Constitution of the Ukrainian SSR, as formally independent and sovereign state. The elements of the constitutional review were first laid down in the Enactment 6 of the Ukrainian SSR Constitution, which attributed the state control over the activities of the Soviet authorities to the jurisdiction of the Central Soviet rule (All-Ukrainian Congress of Workers, Peasants and Red Army Deputies, Ukrainian Central Executive Committee and The Council of People's Commissars). Adoption, amendments and additions to the Constitution of the Ukrainian SSR was the exclusive competence of the Congress of Soviets [5]. Thus, the Constitution of the Ukrainian SSR of 1919 identified only state control over the activities of Soviet power, which could be realized only by the central authorities.

In the Enactment 19 of the Ukrainian Socialist Soviet Republic Constitution of 1937, the concept of «the control over the Constitution implementation» was introduced. This function is vested on the Parliament, but it has been carried out by the party organs. The CPBU (starting from October 1952, the CPU) as a constituent of the CPSU with its ramified regional, city, district, and other party committees were the highest political entities of the constitutional control on the observance of Ukrainian Socialist Soviet Republic Constitution [6]. In its work, the CPU used the Program and the Charter of the USSR, in particular, carrying out the highest constitutional review, basing not on the Constitutions of the USSR and the Ukrainian Socialist Soviet Republic, but on the general line of the Communist Party, which has been formulated on the CPSU meetings and specified for Ukraine at the CPU meetings.

The USSR Constitution of 1977 and the Ukrainian Socialist Soviet Republic Constitution of 1978 didn't define a special institution of constitutional justice. The Supreme Soviet Presidium of the Ukrainian Socialist Soviet Republic, under the Enactment 106 of the Ukrainian Socialist Soviet Republic Constitution, in 1978 was a permanent body, which had the constitutional control. Enactment 108 of the Ukrainian Socialist Soviet Republic Constitution states that the Presidium realizes the observance of the Ukrainian Socialist Soviet Republic Constitution and the interpretation of laws [7]. The Ukrainian Socialist Soviet Republic Constitution states that all the Party organizations operate within the Constitution of the USSR (not the Ukrainian Socialist Soviet Republic), but the CPSU, not the CPU was called the directing and guiding force of the Soviet society, the nucleus of its political system of state and public organizations in the Enactment 6 of the Ukrainian Socialist Soviet Republic Constitution. Under this Enactment, the CPSU carried out not only higher political, but also ideological constitutional and supreme control on the basis of Marxism-Leninism.

On October 27th, 1989, the amendments to the Ukrainian Socialist Soviet Republic Constitution of 1978 have been made, according to the Enactment 112, the formation of the Constitutional Review Committee was provided. The Committee was elected by the Ukrainian Socialist Soviet Republic Supreme Soviet for 10 years, consisting of the chairman, his deputy and seven members. The Constitutional Review Committee was authorized to grant the Ukrainian Socialist Soviet Republic Parliament the conclusions about the constitutionality of draft laws; to supervise the constitutionality of laws, decrees, and orders of the Ukrainian Socialist Soviet Republic Council of Ministers; deliver opinions on the constitutionality of acts of local councils and other public bodies and public organizations of the republic. The Constitutional Review Committee of the Ukrainian Socialist Soviet Republic was not established.

After the proclamation of Ukraine's Declaration of State Sovereignty on July 16th, 1990, a new qualitative stage of constitutional justice formation in Ukraine began. Declaration enshrined the principle of the state power separation into legislative, executive and judicial. [8] This required the institution of

constitutional control. On October 24, 1990, the Ukrainian Socialist Soviet Republic Law «On amendments to the Constitution (Fundamental Law) of the Ukrainian Soviet Socialist Republic» from October 24th, 1990 provides for the establishment of the Ukrainian Socialist Soviet Republic Constitutional Court, whose membership should be elected by the Supreme Council of the Ukrainian Socialist Soviet Republic [9].

According to the Enactment 112 of the Ukrainian Socialist Soviet Republic Law «On amendments to the Constitution (Fundamental Law) of the Ukrainian Socialist Soviet Republic», The Constitutional Court is elected by the Ukrainian Socialist Soviet Republic Supreme Council for ten years among experts in the field of law, consisting of the Chairman, his deputy and 23 judges. The person, elected to the Constitutional Court cannot simultaneously be a member of other state bodies, activities and acts of which are controlled by the Constitutional Court; also they cannot be national deputies or belong to any political parties and movements. The judges are independent in the performance of their duties and are subject only to the Constitution of the Ukrainian SSR.

The organization and procedure of the Constitutional Court of the Ukrainian SSR are specified by the Law «On the Constitutional Court of the Ukrainian SSR», dated by June 3rd, 1992 [10]. It is an independent body within the judicial system, whose mission is to ensure the compliance with laws and other normative acts of the Ukrainian Constitution legislative and executive power, to protect the rights and freedoms of single person and of all citizens. The Constitutional Court covers such issues as the cases on the constitutionality of acts of the Ukrainian Supreme Council, Ukrainian President, Ukrainian Cabinet of Ministers, Presidium of the Ukrainian Supreme Council, the Parliament and the Council of Ministers of Crimea; the constitutionality of Ukraine's international treaties; dissolution of political parties; disputes between the Ukrainian territorial entities; compliance by the President, Prime Minister and other members of the Government, the President of the Supreme Court, the Supreme Arbitration Court, the Prosecutor General of Ukraine, as well as diplomatic and other representatives of Ukraine the Constitution and the laws of Ukraine in the case of the early termination of their powers.

The Constitutional Court consists of 15 judges, the President and his two deputies, elected for the period of 10 years. The Ukrainian Supreme Council Chairman and the President of Ukraine propose the candidates for the judge vacancies in the same amount. The candidacy of the Ukrainian Constitutional Court Chairman is negotiated with the Supreme Council Speaker and the President. The judges' candidacies are previously discussed at the Ukrainian Supreme Council's permanent committees' meetings. Only the citizens of Ukraine, who have voting rights, and reached 40 years of age by the Election Day, with higher legal education and practical experience, as well as scientific or educational activities in the field of law for at least 15 years may become judges. However, the law does not specify the mechanism of constitutional proceedings, although the Enactment 3 states the need for a separate law on constitutional proceedings. The constitutional justice body was not created because of the imperfect procedure of the Constitutional Court formation and the political confrontation between the Parliament and the President of Ukraine.

On June 28th, 1996, the Constitution of Ukraine, which newly defined the procedure for the formation and functioning of the Ukrainian Constitutional Court was adopted. Enactment 147 states that the Constitutional Court of Ukraine is the only body of constitutional jurisdiction in Ukraine [12]. On October 16th, 1996, the Law of Ukraine «On the Constitutional Court of Ukraine», which specified the principles of its organization and activities, and from January 1st, 1997, the Court began to take the constitutional petitions and appeals into consideration. [13] The organizational issues of the Constitutional Court of Ukraine are regulated by the Rules of the Constitutional Court of Ukraine, adopted on March 5th, 1997.

On the 8 of June 1995 the Verkhovna Rada of Ukraine and the President signed the Constitutional agreement on basic principles of organization and functioning of the state power and local authorities in Ukraine for the period before the adoption of the new Constitution of Ukraine. The article 38 of the Agreement states that Constitutional Court of Ukraine is an independent organ of the judicial power that supplies the relevancy of laws and other legal acts of legislative and executive power of the Constitution of Ukraine and provides protection of constitutional rights and freedoms of man and citizen [11]. The quantitative composition of Constitutional Court of Ukraine is not defined by the Agreement, however it is stated that the Verkhovna Rada of Ukraine and the President appoint the half of the amount of judges, while the Head of Constitutional Court of Ukraine is appointed by the Verkhovna Rada through the common appointment on this position from the Head of Verkhovna Rada of Ukraine and the President. Basing on the Constitutional Agreement from 1995, the Constitutional Court of Ukraine is not formed.

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The Constitutional Court of Ukraine provides supremacy and direct effect of the Constitution of Ukraine throughout the state, preventing unconstitutional acts and providing constitutional law; it is directly related to the interpretation of the Constitution and laws of Ukraine. Protection of constitutional values, enshrined in the Constitution of Ukraine, is the essence and content of judicial constitutional review. Judicial constitutional control includes regulatory control, the official interpretation of the Constitution and laws of Ukraine and resolving of the constitutional disputes.

Conclusions. The formation of the constitutional justice in Ukraine is the result of a long historical development, but it cannot be considered separately from the history of the foreign countries' constitutional control formation, as the territory of Ukrainian lands for a long time were under the jurisdiction of other states, and the national scientists have been influenced by the legal doctrine, developed by the foreign scientists.

According to the research, the following stages of the institution of constitutional justice in Ukraine have been distinguished. The first stage, from 1710 to the beginning of the XX century – justification by the domestic scientists of the need to introduce constitutional justice to limit state power and check the laws for their constitutionality; introduction of certain constitutional authority forms on the territories of Western Ukraine, which were part of Poland, Czechoslovakia and Romania. The second stage took place between 1919 and 1990 (Soviet period). The Ukrainian SSR constitutions were complimented by the constitutional elements and the parliamentary form of constitutional review was introduced. The third phase starts from 1990 and lasts until the present time. The practical formation of constitutional justice and modern constitutionalism in Ukraine is identified by the adoption of the 1996 Constitution of Ukraine and the Law «On Constitutional Court of Ukraine».

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Конончук І. Вплив конституційної юстиції на розвиток українського конституціоналізму. У статті на основі аналізу правових актів та конституційно-правових доктрин, представлених у працях українських учених і державознавців, досліджено виникнення, становлення інституту конституційної юстиції в Україні та її вплив на розвиток конституціоналізму. Охарактеризовано особливості становлення конституційної юстиції в різні історичні періоди та визначено основні етапи формування. Зазначено, що у системі українського конституціоналізму важлива роль належить конституційній юстиції, що обумовлено специфікою конституційно-правового статусу та компетенцією Конституційного Суду України як єдиного органу конституційної юрисдикції в Україні.

Ключові слова: конституційний контроль, конституціоналізм, Конституція України, Конституція УРСР, Конституційний Суд України.

Конончук ІІ. Влияние конституционной юстиции на развитие украинского конституционализма. В статье на основе анализа правовых актов и конституционно-правовых доктрин, представленных в работах украинских ученых и государствоведов, исследованы возникновения, становления института конституционной юстиции в Украине и ее влияние на развитие конституционализма. Охарактеризованы особенности становления конституционной юстиции в разные исторические периоды и определены основные этапы формирования. Отмечено, что в системе украинского конституционализма важная роль принадлежит конституционной юстиции, что обусловлено спецификой конституционно-правового статуса и компетенцией Конституционного Суда Украины как единственного органа конституционной юрисдикции в Украине.

Ключевые слова: конституционный контроль, конституционализм, Конституция Украины, Конституция УССР, Конституционный Суд Украины.