*Anna Adzhem*

**Application of the rule of law principle in the jurisprudence of the Constitutional Court of Ukraine**

**Introduction**

The principle of the rule of law is fundamental for the functioning of any democratic state. This means that all state authorities, including courts, are obliged to act without exception within the framework of the law. It guarantees that the rights and freedoms of a person and a citizen will be protected from arbitrariness on the part of the authorities. The Constitutional Court of Ukraine (CCU) is the guarantor of ensuring the rule of law. It has the following powers:

-to check for the compliance of laws and other legal acts with the Constitution of Ukraine;

-to give an official interpretation of the Constitution of Ukraine;

- to resolve the issue of conformity of the Constitution of Ukraine with the laws of Ukraine (their separate provisions) upon a constitutional complaint of a person who believes that the law of Ukraine applied in the final court decision in his case contradicts the Constitution of Ukraine.

**Analysis of CCU jurisprudence**

1. Case *No. 17-рп/2010* dated June 29, 2010

The case based on the constitutional submission of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine regarding the compliance with the Constitution of Ukraine of paragraph eight, point 5, part one, Article 11, of the Law of Ukraine “On the National Police”, according to which the police are given the right to detain and keep in specially designated premises persons suspected of vagrancy, – for up to 30 days under a motivated court decision, contrary to Articles 29, 33, 58 of the Constitution of Ukraine, since it violates the rights of citizens to freedom and personal inviolability, freedom of movement and free choice of place of residence and entitles police officers to apply coercive measures to persons for acts that are not recognized as an offense in accordance with the legislation of Ukraine.

One of the key elements of the rule of law is the *principle of legal certainty*, which states that the restriction of fundamental human rights and the implementation of these restrictions in practice is permissible only if the application of legal rules established by such restrictions is predictable. In the case, this requirement was violated, thus the Constitutional Court of Ukraine declared that paragraph eight of paragraph 5 of part one of Article 11 of the Law of Ukraine “On the National Police” does not comply with the Constitution of Ukraine.

2. Case *No. 3-рп/2012* dated January 25, 2012

The case is based on the constitutional submission of the Board of the Pension Fund of Ukraine regarding the official interpretation of the provisions of Article 1, parts one, second, third of Article 95, part two of Article 96, paragraphs 2, 3, 6 of Article 116, part two of Article 124, part one of Article 129 of the Constitution of Ukraine, paragraph 5 of part one of Article 4 of the Budget Code of Ukraine, paragraph 2 of part one of Article 9 of the Code of Administrative Procedure of Ukraine in systemic connection with certain provisions of the Constitution of Ukraine in the aspect of the following issues:

- whether the state is authorized to establish the content and the volume of social payments depending on its socio-economic capabilities;

- whether the state has the right to change the order and the amount of existing social benefits and aid financed from the State Budget of Ukraine;

- whether the bylaws of the Cabinet of Ministers of Ukraine on social protection of citizens issued in pursuance of the requirements of the Budget Code of Ukraine, the law on the State Budget of Ukraine for the corresponding year and other laws of Ukraine are binding for the application by courts of Ukraine.

One of the important elements of the rule of law is also the *principle of proportionality,* which in the field of social protection means, in particular, that the measures provided for in normative legal acts should be aimed at achieving a legitimate goal and should be commensurate with it.

Therefore, in the aspect of the constitutional submission of the provision of Article 1, part one, third of the Article 95 of the Constitution of Ukraine in systemic connection with the provisions of Article 3, part one of Article 17, part three of Article 22, Articles 46, 48 of the Constitution of Ukraine should be understood in such a way that one of the features of Ukraine as a social state is the provision of general social needs in the field of social protection at the expense of the State Budget of Ukraine based on the financial capabilities of the state;

- in the aspect of the constitutional submission of the provisions of part two of Article 96, paragraphs 2, 3, 6 of Article 116 of the Constitution of Ukraine, it should be understood that the powers of the Cabinet of Ministers of Ukraine to elaborate a draft law on the State Budget of Ukraine and ensure the implementation of the relevant law are related to its functions, including the implementation of policies in the field of social protection and in other areas. Thus, the Cabinet of Ministers of Ukraine regulates the order and the amount (number) of social payments and benefits financed from the State Budget of Ukraine;

- in the aspect of the constitutional submission of the provisions of part two of Article 95, part two of Article 124, part one of Article 129 of the Constitution of Ukraine, paragraph 5 of part one of Article 4 of the Budget Code of Ukraine and paragraph 2 of part one of Article 9 of the Code of Administrative Procedure of Ukraine in systemic connection with the provisions of Article 6, part two of Article 19, part one of Article 117 of the Constitution of Ukraine should be understood as follows, that courts, when deciding cases on social protection of citizens, are guided, in particular, by the *principle of legality*. This principle provides for the application by the courts of the laws of Ukraine, as well as normative legal acts of the relevant state authorities, the law on the State Budget of Ukraine for the corresponding year and other laws of Ukraine.

3. Case *No. 2-рп/2005* dated March 24, 2005

The decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 48 people’s deputies of Ukraine on the compliance of the Constitution of Ukraine with the provisions of paragraph 1.17 of Article 1, Article 8 of the Law of Ukraine “On the procedure for repayment of taxpayers’ obligations to budgets and state trust funds”.

According to people’s deputies of Ukraine, the provisions of subclauses 8.6.1, 8.6.2 of paragraph 8.6 of Article 8 of the Law contradict Articles 41, 42 of the Constitution of Ukraine, since they “limit the rights of legal entities and individuals to own, use, dispose of their property and the right to engage in entrepreneurial activity”.

In its Decision No. 15-рп/2004 of November 2, 2004, the Constitutional Court of Ukraine pointed out, that *justice* is one of the basic principles of law, is decisive in defining it as a regulator of social relations, one of the universal dimensions of law. Such elements of law as, in particular, *proportionality, equality, morality*, are united by a *quality* corresponding to the ideology of justice. The extension of the right of tax lien to any type of taxpayer’s assets that exceeds the amount of tax liability or tax debt can lead to the deprivation of such a taxpayer not only of profits, but also of other assets, jeopardizing his further business activities up to its termination. In view of this, the Constitutional Court of Ukraine ruled:

- to recognize the provisions of paragraph 1.17 of Article 1, paragraph 8.1, paragraphs one, three, four of subparagraph 8.2.1 of paragraph 8.2, paragraph 8.4, subparagraphs 8.6.1, 8.6.2, 8.6.3 of paragraph 8.6 of Article 8 of the Law of Ukraine “On the procedure for repayment of taxpayers’ obligations to budgets and state trust funds” as constitutional;

-to recognize the provisions of the Law of Ukraine “On the procedure for repayment of taxpayers’ obligations to budgets and state trust funds” as inconsistent with the Constitution of Ukraine;

-to recognize the provisions of the second paragraph of subparagraph 8.2.1, subparagraph 8.2.2 of paragraph 8.2 of Article 8 of the Law of Ukraine “On the procedure for repayment of taxpayers’ obligations to budgets and state trust funds” as unconstitutional.

**Conclusions**

Despite the fact that the CCU plays vital role in guaranteeing the rule of law, there are certain problems that need to be solved. They include:

-low effectiveness of the mechanisms for implementing decisions of the CCU: sometimes the authorities do not enforce the decisions of the CCU, that reduces the authority of the Court;

-political engagement of CCU judges: some critics claim that CCU judges are not always impartial, and make decisions under the direct influence of political forces.

The Constitutional Court of Ukraine has an important role in ensuring the rule of law in Ukraine. In particular, the Court actively applies the principle of the rule of law when deciding cases.

For the further development of CCU case-law in this direction, it is necessary to:

-strengthen the mechanisms for the implementation of the decisions of the CCU: this can be implemented by granting the CCU greater powers and increasing liability for non-implementation of its decisions;

-ensure the impartiality of judges of the CCU: this can be achieved by changing the procedure for appointing judges and strengthening their responsibility.

**Literature:**

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