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PROBLEM OF DIRECT ACTION OF THE CONSTITUTION: LEGAL REALITIES OF THE REPUBLIC OF BELARUS

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The article deals with the problem of direct action by the example of the constitution of the Republic of Belarus. The issue was investigate in view of the division of constitutional rules on the norms-principles and norms-rules. The problem of direct action of the Constitution considered on the basis of the practices of the Constitutional Court of the Republic of Belarus.

The problem of direct action of the Constitution related to the question of composition of the constitutional rules. In the science of constitutional law it has developed very general division of the constitutional norms in terms of normativity into two large groups: the norms-principles and norms-rules. Norms-Principles reinforce the basic principles, guiding ideology, determined the conceptual content of the legal regulation. For example, Article 7 of the Constitution of the Republic of Belarus: The Republic of Belarus shall be bound by the principle of supremacy of law. Norms-rules directly regulate social relations; clearly define the rights and obligations, conditions of their implementation. For example, Article 30 of the Constitution provides that citizens of the Republic of Belarus shall have the right to move freely and to choose their place of residence within the country and to leave it and return to it without hindrance.

The constitutional provisions with direct regulation of certain relationships cause the fewest problems in law-making and law enforcement. Here in front of law-making body is a task of detailing the constitutional provisions, establishing guarantees of the rights, freedoms and duties stipulated by the constitution, development of procedural models of the implementation of such rules. Before enforcer - the use of the constitutional norms for dealing with legal affairs.

The Constitutional Court of the Republic of Belarus repeatedly in the Conclusions №3-67/98 of 24 June 1998 [1], №3-78/99 of 13 May 1999 [2] annual addresses of the Constitutional Court of the Republic of Belarus (Decision dated 25 January 2011 № P-565/2011 "On constitutional legality in the Republic of Belarus in 2010" [3] decision of January 18, 2012 №P-680/2012 "On constitutional legality in the Republic of Belarus in 2011" [4]), as well as to verify the legality of the decision in the exercise of obligatory preliminary constitutional control expressed the legal position of the direct effect of the norms of part 1 of article 60 of the Constitution.

Constitutional norm under consideration, which guarantees for everyone the protection of their rights and freedoms by the competent, independent and impartial court specified by law terms, no doubt, is the norm of direct character, which requires only the relevant sectoral detail and procedural regulations, which must not distort the right to judicial protection.

At the same time, the practice of the Constitutional Court of the Republic of Belarus knows another approach to the assessment of the direct effect of the norms of the Constitution.

The Constitution in Article 62 states that everyone has the right to legal assistance to exercise and protect his rights and freedoms, including the right to make use, at any time, of assistance of lawyers and one's other representatives in court, other state bodies, bodies of local government, enterprises, institutions, organizations, public associations and also in relations with officials and citizens. In this case, the constitutional norm differs by more than a full regulation of relations on legal assistance, did not actually need an industry specification and Regulation of Procedure.

At the same time in the Resolution of July 2, 2015 №P-989/2015 "On the right of citizens to testify in criminal proceedings, to legal assistance" [5] The Constitutional Court pointed out that the procedural legislation of the Republic of Belarus no special rules on the provision of legal assistance to witnesses, outlined the need to eliminate the corresponding gap in the legal regulation. In fact, the Constitutional Court expressed the legal position in the absence of direct effect of Article 62 of the Constitution.

The Constitutional Court in its legal position is not outlined the simple rules of direct action of the Constitution. After all, the issue of participation in pre-trial lawyer act as a representative of a witness must be determined norm of direct action - Article 62 of the Constitution, and the person conducting the inquiry, the investigator, the prosecutor has no right to refuse the witness to testify in the presence of a representative - a lawyer. The Constitutional Court, on the other hand, has determined that in the rules of criminal procedure legislation does not provide an effective mechanism to ensure the maintenance of the rights of witnesses

participating in criminal proceedings, to legal counsel, are not regulated by the order of the lawyer access to provide such assistance to the witness and his procedural rights.

In general, these provisions of the Constitution (Article 60, 62) in its content and form of presentation are directly applicable because establish clear legal provisions do not contain declarative or programmatic provisions. However, the norms of the Basic Law in the matter of direct action is not perceived the same way by the Constitutional Court.

It is a good to use by the Constitutional Court in its acts references to the direct effect of those provisions of the Constitution, which in its content can be implemented without specifying their acts. Such an approach would provide the real action of the Constitution and eliminate replacement (distortion) of the constitutional norms in specifying and developing regulations.

But here it is important to understand that the problem of compliance with the Constitution and regulations, ensuring its direct action is not only legal, but also political, as well as depending on the legal culture of society.

Constitutional provisions principled position, as opposed to specific rules, cause the greatest difficulties in their application. In constitutional law principles have a special functional load, which is caused by the nature of this field of law – the regulation of all spheres of public relations, and accordingly, the wide application requirements with a high degree of normative generality, and what are the principles.

In constitutional law the principles manifest themselves in two forms: the constitutional principles (principles-ideas) and the principles of the Constitution (principles-norms). [6] Constitutional principles - these are elements of the constitutional doctrine, reflecting the fundamental ideas of legal regulation (eg, the rule of law, constitutionalism, republican form of government, etc.). The principles of the Constitution are constitutional principles (principles-ideas) or some of their elements, which are envisaged in the law (eg, article 109 of the Constitution establishes the principle of judicial power supplies only the courts - an element of the constitutional principle of a law-based state).

Principles-ideas are formed and fixed in the field of science and practice, they are "as logical construction, which begin a relevant theories, and richer then principles-norms, because it is allow different versions of their normative embodiment within the ideas laid down by them. Principles-norms are always concrete, which is dictated by the need to implement them in a clear legal regulations ". [7]

At the same time the constitutional law is know the practice of normative fixing the principles-ideas through the establishment of norm-principle, which contains the common name of the principle, but does not specify the content of this principle and its implementation mechanism. One such example is the already mentioned the principle of supremacy of law or the rule of law. Such an approach to the consolidation of the principles-ideas not through a set of specific principles-norms, revealing the contents of any legal idea, but only by specifying the name of the principle-ideas, involves the problem of enforceability of constitutional provisions.

Principles-ideas enshrined in the form of rule, have a broad meaning, allow various options for their regulatory incarnation, and not always define their clear legal implementation in the form of regulations. Fixed in part 1 of Article 7 of the Constitution the principle of supremacy of law allows for further legal and regulatory specification within very wide limits. For example, the statement can be found in the legal literature that the supremacy of law is first and foremost rule of legislation [8]. At the same time, regulatory voiced in the Constitution of the Republic of Belarus the principle of rule of law, do not contain element about supremacy of Parliament acts.

Using by the Constitution the principles-norms in very general terms, no doubt, provides ample opportunities for their interpretation and application in the present and in the future, as Mr. Hajiyev points out: "constitutional norms-principles increasingly than the specific constitutional norms prone to transformation in the process of interpretation, and that provides the dynamism in the development of constitutional law". [9, p.23] At the same time, these principles potentiated the risk of distortion of fact, the abuse of their limited or broad interpretation for political purposes.

In the decisions of the Constitutional Court of the Republic of Belarus when it is watch over the constitutionality of laws passed by the Parliament of the Republic of Belarus, in the exercise of obligatory preliminary rewiew can meet practical evaluation of projects on the constitutionality through the analysis of the international legal instruments, which is not part of the legal Belarusian system, not ratified by the Republic of Belarus, other way they do not have legal force on the territory of the state.

This is not consistent with the provisions of the Law "On Constitutional Judicial Proceedings" (Article 54, 104), which in this part as a criterion of constitutionality calls international legal instruments ratified by the Republic of Belarus, international treaties and other obligations of the Republic of Belarus, as well as with the provisions of article 116 of the Constitution. However, this approach is legal by virtue of Part 1 of Article 8 of the Basic Law, which is a normative consolidation of principle-ideas about the priority of the universally recognized principles of international law and striving to meet them.

For example, in its decision of December 16, 2015 №P-1006/2015 "On the conformity between the Constitution of the Republic of Belarus and the Law of the Republic of Belarus "On Making Amendments and Addenda to the Law of the Republic of Belarus "On Citizenship of the Republic of Belarus" [10] The Constitutional Court notes in the paragraph 2 of The decisions that the verification of the constitutionality of the Act, the Constitutional Court takes into account the consistency of the test of the Law with the standards of the European Convention on nationality of 6 November 1997 [11], which the Republic of Belarus is not signed, the ratification procedure has not been performed.

In this case, the principle-idea (article 8 of the Constitution) enables the Constitutional Court, when assessing constitutionality, use the basic international legal instruments on human rights, democratic state, regardless of the device to give them legal force on the territory of our state. However, the maximum total formulation of the principle allows to do it selectively and, for example, to ignore some of the other legal values championed by the Council of Europe - the developer of the European Convention on Nationality. Therefore, the true socio-political significance of the constitutional norms of a fundamental nature should be identified taking into account the systemic linkages between the rules of the Constitution, constitutional values.

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