

УДК 342.5

DOI <https://doi.org/10.24144/2307-3322.2023.79.1.25>

SANCTIONS AS A MEASURE OF CONSTITUTIONAL AND LEGAL RESPONSIBILITY: LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

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Kudriavtseva O.M. Sanctions as a measure of constitutional and legal responsibility: legal positions of the Constitutional Court of Ukraine.

The article focuses attention on the role of legal positions of the Constitutional Court of Ukraine in improving all components of constitutional and legal responsibility. It is emphasized that in view of the development of social relations, consolidation of Ukraine's foreign policy course towards full membership in the EU, the war with Russia, one of the key issues is the question of measures of constitutional and legal responsibility (sanctions) in the retrospective aspect. It is noted that currently the measures of constitutional and legal responsibility have the following shortcomings: 1) fragmentation; 2) diversity; 3) conflicts (between normative acts that enshrine them and individual norms of law; conflicts in law-making and law enforcement; conflicts of powers and statuses of state bodies, officials).

The legal positions of the Constitutional Court of Ukraine regarding sanctions as a measure of constitutional and legal responsibility have been revealed. Attention is focused on their features, if the constitutional responsibility is borne by: 1) a collective subject; 2) an individual subject. It is emphasized that if the constitutional responsibility is borne by an individual subject – sanctions should be individualized as much as possible; a balance must be achieved between the protection of state interests, state security and interference with the rights and freedoms of an individual subject.

Attention is focused on the sanctions that can be established in the laws of Ukraine (at the same time, it is emphasized that the Verkhovna Rada of Ukraine is not the only entity empowered to establish sanctions), the constitutional and legal responsibility that the parliament itself bears for the adopted laws, acts of public legislation, absolutely defined and non-alternative sanctions.

Key words: constitutional offense, constitutional and legal responsibility, sanctions, cancellation, suspension, termination, annulment, restrictions, state authorities, local self-government bodies.

Кудрявцева О.М. Санкції як міра конституційно-правової відповідальності: правові позиції Конституційного суду України.

В статті акцентується увага на ролі правових позицій Конституційного Суду України в удосконаленні всіх складових конституційно-правової відповідальності. Підкреслюється, що з огляду на розвиток суспільних відносин, закріплення зовнішньополітичного курсу України на набуття повноправного членства в ЄС, війну з росією одним з ключових питань стає питання заходів конституційно-правової відповідальності (санкцій) у ретроспективному аспекті. Зазначається, що наразі заходам конституційно-правової відповідальності притаманні такі недоліки: 1) фрагментарність; 2) розрізненість; 3) колізії (між нормативними актами, які їх закріплюють, та окремими нормами права; колізії в правотворчості та в правозастосуванні; колізії повноважень та статусів державних органів, посадових осіб).

Виявлено правові позиції Конституційного Суду України щодо санкцій як міри конституційно-правової відповідальності. Акцентовано увагу на їх особливостях, якщо конституційну відпові-

дальність несе: 1) колективний суб'єкт; 2) індивідуальний суб'єкт. Підкреслюється, що якщо конституційну відповідальність несе індивідуальний суб'єкт – санкції мають бути індивідуалізовані настільки, на скільки це можливо; має бути досягнуто балансу між захистом інтересів держави, безпеки держави і втручанням в права і свободи індивідуального суб'єкта.

Фокусується увага на санкціях, які можуть встановлюватись в законах України (при цьому підкреслюється, що Верховна Рада України не єдиний суб'єкт, наділений повноваженнями з встановлення санкцій), конституційно-правовій відповідальності, яку несе сам парламент за прийняті закони, абсолютно визначених, безальтернативних санкціях.

Ключові слова: конституційне правопорушення, конституційно-правова відповідальність, санкції, скасування, призупинення, припинення, анулювання, обмеження, органи державної влади, органи місцевого самоврядування.

Formulation of the problem.

Ukraine is on the path of integration with the EU in order to achieve its full membership in this integration association. The key entities that ensure the implementation of this foreign policy course of our state are the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine, people's deputies of Ukraine, political parties, etc. Today, one of the urgent issues that needs to be resolved is the issue of improving all components of constitutional and legal responsibility, because ensuring the principle of the rule of law is one of the key conditions for a state's entry into the EU.

Unfortunately, although in scientific research scientists pay attention to certain sanctions as a measure of constitutional and legal responsibility (cancellation or suspension of acts of state bodies and local self-government bodies or their individual provisions (Yu.M. Bysaga [1; 2], O.P. Vasilchenko [3], L.M. Dshko [4; 5], O.S. Lotyuk [6; 7], etc., termination of the activities of state bodies, local self-government bodies, their officials and officials (N.V. Mishina [8], V.L. Fedorenko [9], etc.); annulment of the legal results of certain constitutional and legal actions; restriction or suspension of some basic rights of citizens (A.E. Evstigneev [10], Z.S. Kravtsova [11], etc.; annulment of the decision to accept Ukrainian citizenship (S.V. Gretska [12], G.Yu. Nechiporuk [13], etc.), nevertheless, the following remain problematic aspects of the application of constitutional and legal responsibility: 1) fragmentation, 2) disparity, 3) a significant number of gaps in the procedural order of bringing to constitutional and legal responsibility.

The legal positions of the Constitutional Court of Ukraine play an important role in improving all components of constitutional and legal responsibility.

The purpose of this article

The purpose of this article is to reveal the positions of the Constitutional Court of Ukraine regarding sanctions, which are measures of constitutional and legal responsibility.

Presenting main material.

In the doctrine of constitutional law, it is emphasized that the subjects of a constitutional offense against which sanctions are applied as a measure of constitutional and legal responsibility are the state; natural persons who are subjects of constitutional and legal responsibility, if they: have Ukrainian citizenship; have reached 18 years of age and are legally competent; legislative body of state power - Verkhovna Rada of Ukraine; President of Ukraine; local self-government bodies, which are primarily responsible to the citizens who elect them; executive bodies of state power.

In the decision in the case of the constitutional complaints of Gevork Senekerymovych Barseghyan and Nataliya Mykolaivna Lynenko regarding the compliance with the Constitution of Ukraine (constitutionality) of Article 485 of the Customs Code of Ukraine (regarding the individualization of legal responsibility), the Constitutional Court of Ukraine noted that «...the Verkhovna Rada of Ukraine has the authority to adopt laws with the regulation of grounds and the procedure for bringing persons to administrative responsibility, observing constitutional norms and principles.» It follows that sanctions can be established in the laws of Ukraine. The entity that can establish them is the Verkhovna Rada of Ukraine, but it is not the only entity endowed with such authority. The Parliament of Ukraine bears constitutional and legal responsibility for adopted laws. As for sanctions, the Verkhovna Rada of Ukraine has the authority to establish them in the laws of Ukraine for the entire range of subjects of constitutional and legal responsibility. It is also mandatory for the Parliament of Ukraine to observe the constitutional norms and principles of constitutional law, because these principles are the fundamental ideas that determine the essence, content, direction and forms of constitutional and legal regulation.

In the same decision, the Constitutional Court of Ukraine noted that «...the legitimate purpose of establishing restrictions on the rights and freedoms of a person and a citizen in the field of customs

relations and bringing the guilty person to justice for violating customs rules is the need to protect customs interests and customs security of Ukraine.» It follows that when establishing sanctions as a measure of constitutional and legal responsibility, the goal of protecting the interests of the state and the security of the state must be observed.

In paragraph 4.3 of its decision, the Constitutional Court of Ukraine notes that «...4.3. The Constitutional Court of Ukraine, assessing the compliance of the disputed provision of Article 485 of the Code with the Basic Law of Ukraine, first of all recognizes the possibility of establishing in acts of public legislation (administrative, criminal, etc.) absolutely defined and (or) non-alternative sanctions, which is undoubtedly a positive phenomenon in the case when the subject of law enforcement is an authority different from the court». It follows that the subject that applies sanctions as a measure of constitutional and legal responsibility can be not only the court, but also another authority. Of course, in order to apply the sanction, he must be given such authority. It also follows from this that both absolute and non-alternative sanctions can be established in acts of public legislation.

At the same time, as the Constitutional Court of Ukraine has repeatedly noted in its practice, the constitutional principle of individualization of legal responsibility must be observed in the case of legislative regulation of relations with regard to bringing a person to constitutional and legal responsibility.

Therefore, the establishment in acts of public legislation of absolutely defined and (or) non-alternative sanctions as a measure of constitutional and legal responsibility should be combined in a balanced way with giving the subject of their imposition discretion in the matter of determining the type and amount of penalty or punishment, taking into account the nature of the committed illegal act, the form of guilt, characteristics of the person guilty of committing a constitutional offense, the possibility of compensation for the damage caused, the presence of circumstances mitigating or aggravating responsibility. At the same time, we emphasize that in some cases, citizens of Ukraine can bear constitutional and legal responsibility only if they have the special legal capacity of a deputy, official, etc.

As noted in their works by O. Sovgyria and N. Shuklina, «Subjects of constitutional and legal responsibility in the retrospective aspect are those subjects of the constitutional law of Ukraine who are endowed with delict capacity, that is, the ability to bear legal responsibility for their illegal acts. In constitutional law, there are two types of entities with tortious capacity:

- 1) individual (citizens of Ukraine, deputies of all representative bodies of state power and local self-government; officials, etc.);
- 2) collective (state authorities, local self-government bodies, citizen associations and other social formations, (for example, committees and commissions of representative bodies, election commissions, etc.))» [15].

The Constitutional Court of Ukraine, in its decision on the constitutional complaints of Gevork Senekerymovych Barseghyan and Nataliya Mykolaivna Lynenko regarding the conformity of Article 485 of the Customs Code of Ukraine (regarding the individualization of legal responsibility) to the Constitution of Ukraine (constitutionality), notes that «...the need to individualize the amount of the fine is urgent in cases, when this size is significant, as a result of which its application may be an excessive interference with a number of constitutional rights of the guilty person» [14]. It follows that sanctions should be individualized as much as possible. This is due to the fact that thanks to the individualization of sanctions, it is possible to implement the principle of individualization of constitutional and legal responsibility when bringing a person to constitutional and legal responsibility, and for this, an appropriate legislative basis must be created for applying presumptive measures to the violator.

In the above-mentioned decision, the Constitutional Court of Ukraine notes that «...another condition for the compliance of the contested prescription of Article 485 of the Code with the Basic Law of Ukraine is that it provides an appropriate regulatory basis for establishing a fair balance between the public interest in the protection of customs security of Ukraine and the protection of the property rights of the person to whom an administrative sanction in the form of a fine was imposed» [14]. It follows from this that, firstly, the regulatory basis on which sanctions are established must be proper. Secondly, there must be a fair balance between the public interest of the state and the protection of the rights of the individual - the subject of constitutional and legal responsibility.

At the same time, O. Sovgyria and N. Shuklina rightly emphasize that when the guilt of a collective subject is recognized, the constitutional responsibility rests precisely on the collective subject, and not on individual members of the collective or managers, who at the same time can bear personal responsibility for their own illegal and culpable actions related to the guilt of a collective subject [15, p. 40]. The current

legislation provides for cases when collective subjects are responsible for the illegal and culpable actions of their employees, which were carried out by them within the scope of official duties, being responsible for them as their own actions (Article 56 of the Constitution of Ukraine) [15, p. 40-41]. In such cases, both subjects of constitutional law are responsible.

Conclusions.

The legal positions of the Constitutional Court of Ukraine regarding sanctions as a measure of constitutional and legal responsibility are as follows: 1) sanctions can be established in the laws of Ukraine; 2) the Verkhovna Rada of Ukraine is not the only entity empowered to impose sanctions; 3) the parliament of Ukraine bears constitutional and legal responsibility for adopted laws; 4) the Verkhovna Rada has the authority to establish sanctions as a measure of constitutional and legal responsibility in the laws of Ukraine for the entire range of subjects of constitutional and legal responsibility; 5) compliance by the Parliament of Ukraine with constitutional norms and principles of constitutional law is mandatory; 6) when establishing sanctions as a measure of constitutional and legal responsibility, the goal of protecting the interests of the state and the security of the state must be observed; 7) acts of public legislation may establish both absolute and non-alternative sanctions; 8) sanctions should be individualized as much as possible.

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