

## APPLICATION OF CONSTITUTIONAL PRINCIPLES IN JUDICIAL ENFORCEMENT

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The subject. Constitutional principles as phenomenon that attracts increasing attention of researchers in the development of post-soviet national legal systems.

The purpose of the paper. The purpose of this study is to reveal the relationship between constitutional principles and law enforcement.

The methodology of the study. The author of the study used general scientific methods of cognition: analysis, synthesis, abstraction, as well as applied practical methods such as statistical and case-method. The research is also based on the regulatory legal acts and judicial practice, as well as on the opinions of representatives of legal science in the analyzing sphere.

The main results and scope of their application. There are several reasons for scientific attention to constitutional principles. On the one hand this is connected with the increasing interest in natural law, forms of its manifestation, in the crisis conditions of the development of modern States and societies. On the other hand, on the territory of the post-Soviet states, the sphere of law enforcement is at the stage of its reform, as are the national legal systems themselves. In this regard, the search for effective methods of improving legal institutions and law enforcement relations becomes urgent. This method, according to the author, could be natural law in such a form of its manifestation as constitutional and legal principle.

Constitutional principles as fundamental principles (ideas, requirements) fixed in the norms of law or followed from them. They reflect the essence of law and determine the content and procedure for the implementation of legal regulations in socially significant situations, determine the law enforcement sphere of the state. Judicial law enforcement is a complex process. As a result of their functioning a legal prescription as a model of behavior through the activities of a special subject - the court is embodied in real social relations.

Conclusions. The constitutional principles at various levels, from ideas to specific regulations, relating to state and society in general and specific to their individual institutions, serve as the basis of law enforcement. They determine judicial activities, the subjects of law enforcement, procedure, jurisdiction, establish its boundaries and a measure of its quality.

### **1. Introduction.**

Constitutional principles are a phenomenon that attracts increasing attention of researchers in the context of the development of post-Soviet national legal systems. This is due to several reasons. On the one hand, with the growing interest in natural law, its forms of manifestation, in the crisis conditions of the development of modern States and societies. On the other hand, on the territory of the post-Soviet States, the sphere of law enforcement is at the stage of its reform, as are the national legal systems themselves. In this regard, the search for effective methods of improving legal institutions and law enforcement relations becomes urgent. This role could be played, according to the author of the study, by natural law in such a form of its manifestation as constitutional and legal principles.

The purpose of this paper is to reveal the relationship between constitutional principles and judicial law enforcement. Various aspects of this problem were studied by such researchers as Avakian S. A.[1], Bondar N. S.[2], Hajiyeu [3], Kokotov A. N. [4], Kruss V. I. [5], Liverovsky A. A.[6-8], Taeva N. E. [9] and others. Meanwhile, a number of aspects of the analyzed problem continues to remain unclear.

### **2. The essence of constitutional judicial law enforcement.**

Law enforcement is a form of law enforcement. It is an activity that involves solving legal cases based on the rules of law. Law enforcement is carried out by authorized state bodies and officials, is characterized by a state-power character and is carried out in certain procedural forms. In essence, law enforcement is a translation of the content of legal norms into real life. The result of enforcement is a law enforcement act. Law enforcement act – a decision to bring to legal

responsibility, a court verdict, or a decision in a civil case. This is the final step in the law enforcement process, the result of the implementation of legal norms in a specific life situation.

The application of law is related to state coercion. Moreover, according to Alekseyev S. S., law enforcement is the only channel in the conditions of strict legality, through which state coercion is actually carried out in the process of legal regulation [10, p.179].

Judicial enforcement is the activity of courts in resolving administrative, civil, criminal, and other disputes. The key difference between it and other types of law enforcement activities is the presence of a special subject – the court, which administers justice in procedural forms.

Judicial enforcement is based on constitutional and legal principles and constitutional and legal norms. Constitutional and legal principles and norms are the basis of all legal regulation of public relations. According to Evans, they determine the distribution of decision-making functions between the legislative, Executive, and judicial branches of government, as well as the essential elements of the relationship between the individual and state institutions [11].

### **3. The essence of constitutional and legal principles.**

Constitutional and legal principles are divided into principles-General guidelines and specific regulations [12, p. 12-17]. In addition, the scientific literature suggests a position according to which it is possible to distinguish between intersectoral, sectoral, institutional and special constitutional principles [13, p.36].

According to A. N. Kokotov, the center of constitutional and legal principles and norms are the principles that secure the foundations of the constitutional system, and the most important

among them is the principle of the rule of law [4, p.2162].

According to the researchers, the General principles are expressed in the theoretical provisions of science and indirectly determine the direction and content of constitutional and legal regulation. Principles-specific prescriptions actually act as legal norms regulating the sphere of judicial enforcement.

Baglay M. V. refers to the common principles of constitutional law as the sovereignty of the people, natural law, priority of protection of rights and freedoms, separation of powers, and the rule of law [14, p.30]. (P. 30) Komkova G. N. criticizes this position in terms of natural law and the rule of law, considering that they are very extensive political and legal phenomena that are difficult to attribute to the concept of the principle of law [15, p. 80]. G. N. Komkova's position seems to be a consequence of the fact that she considers constitutional principles as branch principles, without seeing the following. Among the constitutional principles, there are several groups of principles. First, the so-called General legal principles: the principle of justice, the principle of proportionality, the principle of legal security, the principle of good faith and the inadmissibility of abuse of subjective rights. Secondly, the constitutional principles that relate to the constitutional system, and, therefore, cover all spheres of public relations, and among them the principle of the rule of law stands out. The following groups of principles are intersectoral, sectoral, institutional, and special.

Judicial enforcement is determined by principles-General guidelines, and principles - specific regulations that characterize the constitutional system, and are intersectoral, sectoral, institutional, and special.

#### **4. Aspects of the influence of constitutional principles on judicial law enforcement.**

The influence of constitutional principles on the process of consideration of specific legal disputes is manifested in several aspects. Through material and procedural legislation, which is governed by the court; through the procedure of compliance with procedural norms (or allowing deviations in the course of it); in the process of examining evidence, including when deciding on the satisfaction or rejection of requests to call and interrogate witnesses, specialists, on the appointment or refusal to appoint an expert examination, requesting (or not requesting) any information; when evaluating evidence; in the decision-making process. According To M. Kum, the Constitution for all practical purposes establishes a procedure that determines the rules that are subject to judicial enforcement [16].

The following example from court practice confirms this argument.

The ruling of the judicial Board for criminal cases of the Supreme Court of the Republic of Belarus dated 31.05.2019 no. 02N-464/2019 left without consideration the protest of the Deputy Prosecutor General of the Republic of Belarus, brought to the court decisions made in respect of N. The verdict of the court Zhodino on may 24, 2018. N. was justified under paragraph 2 of article 295, part 1 of article 430 of the Criminal Code of the Republic of Belarus (hereinafter – the Criminal Code) . The appeal ruling of the judicial Board for criminal courts of the Minsk regional court of August 14, 2018 upheld this sentence. In his protest, the Deputy Prosecutor General of the Republic of Belarus raised the issue of revoking these decisions in view of the inconsistency of the court's conclusions with the actual circumstances of the criminal case, a significant violation of the criminal procedure law. The

officer felt that taking the decision on the innocence N., the court, in violation of the articles 104,105 of the Criminal procedure Code of the Republic of Belarus (hereinafter – the CCP) all the evidence in full is not checked and an objective assessment of the verdict they gave. In particular, the following evidence was not properly evaluated. After showing the witness B. entries in his own diary, as well as listening to audio recordings of telephone conversations between him and N., B. confirmed the dates and amounts of the monetary remuneration transferred by him to the justified person. The Deputy Prosecutor General believed that the court of first instance did not evaluate these statements in the verdict, and the higher courts also ignored these circumstances. The official who brought the protest disputed the conclusion that during the preliminary investigation, witness B. he gave contradictory statements about the number of meetings with N., during which He gave him a monetary reward. He also pointed out other arguments that, in his opinion, cast doubt on the decisions of the courts rendered in the case.

In considering the appeal, the panel of judges concluded that the court's decision on the recognition of the innocent and acquittal N. under part 2 of article 295 of the Criminal Code is justified and the protest is not contested. The court's conclusion that there is no sufficient evidence of the Commission of a crime under part 1 of article 430 of the Criminal Code of the Republic of Belarus corresponds to the actual circumstances of the case. At the same time, it was taken into account that during the consideration of the case by the court of first instance, the evidence of guilt provided to the court by the prosecution was found insufficient. The accused denied any involvement in the crimes. The testimony of the key witness B. the court

raised doubts about its reliability due to their inconsistency, as well as the written materials of the case submitted to the court, the results of operational search activities.

Ensuring the rights and freedoms of the individual as a manifestation of the principle of the right state requires that, in accordance with parts 3 and 4 of article 16 of the criminal procedure code of the Republic of Belarus, doubts about the validity of the charge are interpreted in favor of the accused. The specified requirement of the legislation was fully met by the courts when considering the criminal case against N. for committing a number of crimes.

Analyzing the court decisions made in this case, the judicial panel on criminal cases of the Supreme Court of the Republic of Belarus did not find violations of criminal and criminal procedure legislation, thus, in particular, coming to the conclusion that inter-sectoral constitutional principles – legality, equality of all before the law and equal protection of rights and freedoms, as well as sectoral principles – publicity (somewhat conditionally attributing this principle to the industry), ensuring the suspect and the accused the right to defense, various judicial instances when considering the above-mentioned criminal case were fully observed. An example of following constitutional principles in the course of law enforcement activities, in particular, when evaluating evidence, is the following. According to part 3 of article 328 of the Criminal Code of the Republic of Belarus, responsibility is established for illegal trafficking of narcotic drugs, psychotropic substances, their precursors and analogues, namely: acquisition, storage, transportation or shipment or illegal sale, committed with qualifying characteristics, in particular, on a large scale. Often in the practice of law enforcement bodies of the Republic of Belarus there are situations when the detection

of the face of a large consignment of banned substances is the basis of the qualification of his actions under part 3 of article 328 of the Criminal Code, because, according to law enforcers, the detection of the face of a large amount of illegal substances allegedly evidence a person has the goal on the marketing of these substances. Based on the explanation contained in paragraph 7 Of the resolution of the Plenum of the Supreme Court of the Republic of Belarus of March 26, 2003 No. 1 on judicial practice in cases of crimes involving narcotic drugs, psychotropic substances, their precursors and analogues, potent and poisonous substances (article 327-334 of the Criminal Code), the sale of narcotic drugs should be understood as any means of their paid or gratuitous transfer to another person. At the same time, it must be established that the intent of the perpetrator was directed specifically at the distribution of narcotic or psychotropic substances. The study of cases in cassation and Supervisory practice of the Supreme Court of Belarus has shown that the sentences in respect of persons convicted under part 2 of article 328 of the Criminal Code or under part 3 of article 328 of the Criminal Code, often changed with the re-qualification of actions guilty from part 3 to part 1 of article 328 of the Criminal Code for lack or insufficiency of evidence to focus the intent of the perpetrators to the sale of drugs. So, according to the verdict of the court of the Chechen district B. he was found guilty of illegal acquisition and possession of large amounts of narcotic drugs for the purpose of sale (part 3 of article 328 of the Criminal Code of the Republic of Belarus) . In the analysis of these cases, the courts that reviewed the sentences of district courts as a follow-up were also based on the principles of equality, fairness, and proportionality. After all, courts, as law enforcement agencies, in fact, reflect

the diversity of the society they serve [17]. Regardless of their position, citizens have the right to equal treatment by state bodies and officials, as well as compliance of the sentence imposed with the committed act. SKOLNIK I. argues that a criminal or related process in which an individual may lose his or her reputation or property is a fundamental indicator of the nature of society. Moreover, the very idea of a process-disinterested, correct, intelligent hearings-forms the idea of a society in which the rule of law is ensured [18]. The above examples demonstrate the implementation of the most important constitutional principle – the principle of the rule of law.

#### **5. Constitutional principles in the system of factors that determine judicial enforcement.**

In the case of judicial enforcement, two groups of factors interact – objective and subjective. Objective-these are the features of a particular law enforcement Agency (its territorial location, size, quality of organization of cases, etc.). Kudryavtsev V. N. and Kazimirchuk V. P. in their research [19, p.90] determined the share of these reasons, namely: 6% - territorial features of the application of the norm, 6% - weak organization of the case, 5% - insufficient information, 4% - methodological support, 5% - planning defects. Another factor is the legal policy of the state, implemented by its law enforcement agencies at a certain stage of development. In particular, due to the spread of narcotic and psychotropic substances, deaths are becoming frequent, and therefore there is a need to apply more stringent measures aimed at preventing their Commission. The place that a judicial institution occupies in the hierarchy of justice bodies is also important, i.e. the district court – the lowest level of the judicial system – or the Supreme Court of the Republic of Belarus, the highest judicial instance, considers a criminal

case. Subjective factors are factors related to the personality of the law enforcement officer: the level of his legal consciousness, General and legal culture, psychological characteristics, etc. as pointed out by I. L. Chestnov, this also includes personal preferences of the individual, value relativism, i.e. the lack of uniformity in the interpretation of the law and its application [20, p.76-79]. When implementing law enforcement, an official tries on a legal prescription for real social relations. However, the rule of law is just a model of behavior, and therefore it can be implemented in different ways. Accordingly, its specific implementation is determined by the law enforcement officer.

Constitutional and legal principles are a manifestation of natural law. They are a kind of tool, a methodology, the use of which in law enforcement, including legal activities, will give law enforcement a humanistic, democratic, legal character. It is the legal consciousness of the law enforcement officer, based on constitutional and legal principles, that allows making objective and legal decisions. In his book Dicey A.V. "The law of the Constitution" writes that its goal is to provide students with a tool that will allow them to influence the constitutional principles on their consciousness [21, p. 5]. It seems that these words are addressed to all law enforcement officers who were once students. Their consciousness and culture should be filled with constitutional and legal principles and norms. Therefore, the training of appropriate personnel armed with constitutional and legal principles is the way that will help to humanize law enforcement, give it the qualities of humanism, justice, and democracy.

## 6. Conclusion.

Constitutional principles, as fundamental principles (ideas, requirements), which are fixed in the norms of law or follow

from them, reflect the essence of law and determine the content and order of implementation of legal regulations in socially significant situations, determine the law enforcement sphere of the state. Judicial enforcement is a complex process in which a legal prescription as a model of behavior through the activities of a special subject-the court-is translated into real social relations. Thus, the constitutional principles at various levels, from ideas to specific regulations relating to state and society in General, and specific to their individual institutions, serve as the basis for judicial enforcement, determine the subjects of law enforcement, procedure, jurisdiction, establish its boundaries, are the measure of its quality.

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