

CONTEMPORARY MATTERS OF CONSTITUTIONALIZATION OF LEGAL NORMS IN THE REPUBLIC OF ARMENIA

NARINE DAVTYAN

The article examines the issues of constitutionalization of law in RA. The constitutionalization of the right is one of the contemporary problems of modern constitutionalism, which is currently of interest not only to specialists in the field of constitutional law but also to scholars dealing with problematic issues in other branches of law, the article studied the Constitutionalization process, which is of great importance in terms of guaranteeing the supremacy of the Constitution and is meant to ensure the compliance of normative legal acts with the requirements of the Constitution.

The process of constitutionalization was studied from an institutional point of view, conventionally classifying it into two main groups.

First, it is the units, operating in the field of public service which is entitled to subject the drafts of normative legal acts to legal examination. One of the important goals of such examination is to provide law-making bodies and officials with conclusions on the conformity of the legal acts reflected in the drafts of the aforementioned normative legal act with the requirements of the Constitution.

Second, as a result of the constitutional reforms of 2015, the role and importance assigned to the Constitutional Court in order to ensure the constitutionalization of the legal field was studied. The Constitutional Court, as a constitutional supervisory body, is called to ensure the supremacy of the Constitution, which is carried out within the framework of concrete and discrete control.

Keywords: *constitutionalization of law, supremacy of the Constitution, process of constitutionalization, legal examination*

The theory of the state and law considers the important issues of the emergence and development of the legal system, providing the main elements of its improvement with signs of constitutionality. Among the main trends covering all the aspects of the process of development and improvement of the legal system, first of all, it is necessary to distinguish the elements of the process of constitutionalization, especially in the field of legislative regulation.

The constitutionality of social relations means the concurrence of the real and the proper (defined by the Constitution). Constitutionality implies the constitutionalization of sectoral legislation and legal practice, that is, compliance of legal principles and norms with the spirit and letter of the Constitution. Constitutionalization of the right is one of the contemporary problems of modern constitutionalism, which is currently of interest not only to specialists in the field of constitutional law but also to scholars dealing with problematic issues in other branches of law. The study of the problems of constitutionalization of law implies the definition of the role of the Constitution as the basis for the development of the legal system of the state, as well as the definition of the mechanism of regulation of public relations by constitutional principles

within the framework of judicial constitutional normative control, which, according to a number of modern approaches, has law-making features.

Despite the existence of a significant number of scientific studies on this topic, some issues related to constitutionalization need a multi-faceted study. It should be noted that research in this field was carried out by A. S. A. Vagyan, G. G. Harutyunyan, I.V. Kravets, V. I. Kruse, A. A. Liverovsky, and others.

The term "Constitutionalization" is used in the narrow and broad sense of the word. In a narrow sense, constitutionalization implies the reflection of certain provisions in the norms of the Constitution. This is the most common approach in constitutional jurisprudence, which is reflected in various legal dictionaries. For instance, the Big Legal Dictionary describes the term "Constitutionalization" as "fixing any provision in the text of the Constitution, giving it constitutional force."¹

In a broad sense, the term "Constitutionalization" means the implementation of the principles and norms of the Constitution in the field of legislation based on the decisions of the Constitutional Court.²

Based on the judicial interpretation of constitutional provisions in modern doctrines, considers constitutionalization and legislative support for their implementation within the framework of constitutional teleology as a science of the goals and problems of constitutional regulation.³

According to V. I. Kruse, constitutionalization should be considered as the constitutionalization of a legal system, which is continuously being formed, gradually acquiring constitutional quality and national consciousness.⁴

A group of theorists considers constitutionalization from other perspectives, in particular, from the perspective of "ideological" constitutionalization, which implies the construction and interpretation of sectoral norms by the legislator in the spirit of constitutional values, principles, and goals. "Normative" constitutionalization ensures compliance of sectoral legislation with the provisions of the Constitution, which are elaborated and concretized in practical concepts. "Practical" constitutionalization includes the constitutionalization of the practice of law and politics.⁵

Thus, Constitutionalization is the subordination of the entire legal system to the Constitution, which forms its core and predetermines the development of this system, which implies the formation of such a legal system in which the supremacy of the Constitution and the law is ensured. The degree of implementation of constitutional norms shows the quality of the constitutional order in the country. Constitutionalization leads to the strengthening of the constitutional

¹ Большой юридический словарь / [В. А. Белов и др.]; Под ред. А.Я. Сухарева, В.Е. Крутских. - 2. изд.

² **Авакьян С. А.** Конституция России: природа, эволюция, современность М. 2000.528.

³ **Кравец И. А.** Конституционная телеология и основы конституционного строя: научно-практическое издание: Издательские решения, 2016. С. 8-9.

⁴ **Крусс В. И.** Конституционализация права: основы теории: монография.М.:Норма: инфа-М2017.240с.

⁵ **Лексин И. В.** Конституционное право и конституционный судебный процесс в свете представлений о конституционализации отраслей российского права //3-й Московский юридический форум. X Международная научно-практическая конференция /Кутафинские чтения/: материалы конференции ч. 1. М. 2016. С. 228-229.

order; predetermines and connects the effectiveness of the application of constitutional legislation and the activity of state bodies.

It should be noted that the need to concretize the Constitutional norms is due to the fact that many of the norms related to the rights of citizens operate through branch legislation. In addition, the Constitution is perceived as a long-term legal document. By adopting normative acts specifying the provisions of the Basic Law, the legislator gets the opportunity to more fully use its regulatory and also political, social, and moral potential in the interest of social progress.

The process of constitutionalization in the Republic of Armenia is of great importance in terms of guaranteeing the supremacy of the Constitution. It is designed to ensure compliance of normative legal acts with the requirements of the Constitution. Constitutionalization as a legal process has its own form and content.

The first refers to the institutional mechanisms of the legal system, through which compliance of legal acts with the Constitution is ensured, the second is related to substantive issues, that is, the compliance of the rules of conduct fixed or to be fixed in normative legal acts with constitutional norms and principles.

According to lawyer G. B. Danielyan, in principle, the legal system should exclude such a phenomenon of legal regulation as the adoption of incomplete and controversial legal acts.⁶ In this sense, in the course of legislative activity, the competent entities must identify the legal needs of the society, make a proper assessment of them, and adopt normative legal acts corresponding to their content. The proper assessment of social needs should be based on the individual demands of citizens that have arisen at the current stage of constitutional development. The content of the constitutional activity of the legislative bodies of the state authorities should lead to the fixation of citizens' demands in legal norms.⁷

Considering the above-mentioned, it should be noted that the process of constitutionalization can be conventionally classified into two main groups from the institutional point of view.

First, it is the units, operating in the field of public service which is entitled to subject the drafts of normative legal acts to legal examination. One of the important goals of such examination is to provide law-making bodies and officials with conclusions on the conformity of the legal acts reflected in the drafts of the aforementioned normative legal act with the requirements of the Constitution.

The general regulations of legal expertise are provided in the RA Law "On Normative Legal Acts" (hereinafter "the Law"). In particular, according to Article 6 of the Law "On Examination and Terms of Draft Normative Legal Acts", the drafts of legislative and sub-legislative normative legal acts are necessarily

⁶ Տե՛ս Գ. Բ. Դանիելյան «Իրավական որոշակիության, իրավունքի անալոգիայի (համանմանության) եվ իրավական ակտի մեկնարանության փոխհարաբերության արդի հիմնախնդիրները», «Բամբեր Երևանի համալսարանի. Իրավագիտություն» Երևան 2016 №2(20), էջ 3-17:

⁷ Гаджиев Г. А. Конституционная идентичность и права человека в России// Ученны е записки юридического факультета. СПб: Фонд «Университет». 2017. Вып. 42-43.

subject to state-legal examination. Exceptions are some cases provided by the Law. The examination is carried out within 15 days by the Agency for Expert Examination of Legal Acts of the Ministry which, develops and implements the government's policy in the field of justice. The specified period may be extended for another ten days. With regard to the normative legal act subjected to examination, a conclusion on its compliance with the Constitution and the Law is prepared.

It should also be noted that according to Part 7 of the aforementioned Law, if the Legal Acts Examination Agency of the Ministry does not issue an expert opinion on the draft of the sub-legislative normative legal act or does not extend the period for providing the opinion, then the body adopting the act may accept it and send it for publication without an expert opinion. Although this provision provides an effective regulation in terms of meeting deadlines, it is quite problematic from the point of view of ensuring constitutionalization.

In addition to the regulations provided by the above-mentioned Law, ensuring the constitutionalization of draft Laws is also carried out in accordance with the constitutional law "Rules of Procedure of the National Assembly", as well as the Work Regulations of the National Assembly (hereinafter the "Work Regulations"). In particular, according to Article 35 of the Work Regulations, "the conclusion of the Staff on the draft law is submitted to the President of the National Assembly and the head committee within three weeks after the draft is put into circulation. The conclusion includes:

- 1) the results of the examination on compliance of the project with the requirements of the Constitution and other laws".

It should also be noted that the legal subdivisions operating in the public bodies also play an important role in the law-making process from the point of view of constitutionalization, which give conclusions on the drafts of normative legal acts to be adopted in terms of compliance with the Constitution.

Second, the Constitutional Court has a special role in ensuring the constitutionalization of the legal field. The Constitutional Court, as a constitutional supervisory body, is called to ensure the supremacy of the Constitution, which is carried out within the framework of concrete and discrete contrAs a result of the constitutional reforms of 2015, the role and importance of the Constitutional Court were emphasized in terms of ensuring the constitutionalization of the legal field. In particular, it should be noted that:

1. The list of disputable legal acts in the Constitutional Court has been expanded. According to Article 168 of the Constitution, sub-legislative normative legal acts, among others, were considered objects of constitutional contr2. The institution of individual applications has been improved. Unlike the previous edition of the Constitution, according to the current provisions of the Constitution, an individual application can be submitted by any individual or legal entity if the latter disputes not only the provision of the normative legal act applied to him/her but also the interpretation of that provision by legal practice. In addition, under the previous edition, only the provisions of the law applied to the applicant could be disputed with an individual application.

3. The role of the President of the Republic has been changed in terms of ensuring constitutionalization. According to Article 123 of the Constitution, the

President of the Republic monitors the preservation of the Constitution, and one of the important ways of exercising this authority is ensuring constitutionality through constitutional monitoring.

4. The range of entities entitled to appeal to the Constitutional Court has been expanded, etc.

It should be noted that the constitutional monitoring institute provides the opportunity to implement the constitutionalization process more efficiently and systematically.

Constitutional monitoring includes the daily analysis of legal norms and law enforcement practices in order to bring them into line with the latest requirements of the Constitution. Moreover, the effective implementation of the power of the President to carry out constitutional monitoring will contribute to the constitutionalization of the legal field to a certain extent.

It should also be noted that according to the Constitution, the President of the Republic, refusing to sign the adopted law, has the right to apply to the Constitutional Court within 21 days to decide the issue of compliance of that law or its provisions with the Constitution. In addition, the President of the Republic has the right to apply to the Constitutional Court to verify the constitutionality of normative legal acts.

The Constitutional Court, in its turn, participates in the process of constitutionalization of legislation, that is, establishes a connection between constitutional principles and norms and legislative regulations of various branches of law. It not only exercises control over the adopted normative legal acts but also predetermines the constitutional development of the state.

Regardless, it is about concrete or discrete constitutional control, the Constitutional Court makes one of the following decisions in accordance with Part 9 of Article 68 of the Constitutional Law "On the Constitutional Court":

1) On recognizing the disputable act or its disputable provision as consistent with the Constitution;

2) On recognizing the disputable act or its disputable provision as consistent with the Constitution according to the interpretation of the Constitutional Court;

3) On recognizing the disputable normative legal act in whole or in part as contrary to the Constitution and later setting a date.

4) On recognizing the disputable normative legal act in whole or in part as contrary to the Constitution and later setting a date in connection with its invalidation.

The Constitutional Court also carries out functions of ensuring constitutionalization related to international treaties, in particular, through preliminary constitutional control. Although the competent department issues a preliminary opinion on international treaties in terms of compliance with the Constitution before submitting them to the Constitutional Court, the final decision on the matter is reserved to the Constitutional Court. This being the case, the Constitutional Court is authorized to adopt only one of the following decisions:

1. On recognizing the obligations stipulated in the international agreement as conforming to the Constitution.

2. On recognizing the obligations stipulated in the international agreement in whole or in part contrary to the Constitution.

In terms of content, when talking about constitutionalization, it should be noted that the Constitutional Court, by revealing the constitutional content of this or that legal norm, or recognizing the norm as contradictory, ensures the supremacy of the Constitution.

In terms of content, from the point of view of ensuring constitutionalization, the provisions related to the fundamentals of the constitutional order established by the Constitution and the basic rights and freedoms of humans and citizens are of great importance because the majority of normative legal acts are related to those provisions.

In addition, in terms of ensuring constitutionalization, the principles of certainty and proportionality stipulated by the Constitution are of particular importance, by application of which the highest quality of constitutionalization is guaranteed.

Thus, the Constitutional Court referred to the constitutional principle of certainty in a number of its decisions. In this regard, a number of positions expressed by the Constitutional Court in its decision SDO-1488 of November 15, 2019, are interesting, namely:

a) "The principle of the legal state, among others, also requires the existence of legal law. The latter should be sufficiently accessible, the legal persons should have the opportunity to determine which legal norms are applied in the given case in appropriate circumstances. The norm cannot be considered a "law" if it is not formulated with sufficient accuracy to allow legal and natural persons to conform their behavior to it; they should have the opportunity to foresee the consequences that this action may cause" (SDO-753 of 13.05.2008),

b) "(...) within the framework of the adoption of the principle of the rule of law, the legal regulations laid down in the law should make the person's legitimate expectations predictable." (SDO-1213 of 09.06.2015),

c) "(...) one of the most important features of the legal state is the supremacy of the law, one of the main requirements for ensuring which is the principle of legal certainty, the regulation of legal relations exclusively with such laws that correspond to certain qualitative features: clarity, predictability, accessibility" (SDO-1270 of 03.05.2016),

The Constitutional Court has also referred to the principle of proportionality in many of its decisions. Summarizing the essence of a number of its legal positions, the Constitutional Court notes that:

"... the principle of proportionality derives from Article 1 of the Constitution (principle of the legal state)", (SDO-917),

According to the decision SDO-1546 of the Constitutional Court of June 18, 2020:

"...any limitation of the fundamental right is possible only by law, and due to the principle of proportionality, the requirements related to the limitations of the fundamental right by law are as follows:

1) the **legitimacy of the purpose** of the restriction, that is, its definition by the Constitution;

2) means selected for limitation:

a) **suitability** to achieve the goal defined by the Constitution;

b) **the necessity** to achieve the goal set by the Constitution;

c) **equivalence** to the meaning of the limited fundamental right and freedom".

Summarizing the above, it should be noted that constitutionalization is an important task from the point of view of ensuring the supremacy of the Constitution. That is why a multi-faceted study is needed, as well as the development of legal regulations.

ՆԱԲԻՆԵ ԴԱՎԹՅԱՆ – Իրավական նորմերի սահմանադրականացման արդի հիմնախնդիրները Հայաստանի Հանրապետությունում – Հոդվածում ուսումնասիրվել են իրավունքի սահմանադրականացման հիմնախնդիրները ՀՀ-ում: Քանի որ իրավունքի սահմանադրականացումը ժամանակակից սահմանադրականության արդի խնդիրներից է, որը հետաքրքրում է ոչ միայն սահմանադրական իրավունքի ոլորտի մասնագետներին, այլև իրավունքի այլ ճյուղերի՝ խնդրահարույց հարցերով զբաղվող գիտնականներին, հոդվածում ուսումնասիրվել է սահմանադրականացման գործընթացը, ինչը կարևոր նշանակություն ունի Սահմանադրության գերակայությունն երաշխավորելու առումով և կոչված է ապահովելու նորմատիվ-իրավական ակտերի համապատասխանեցումը Սահմանադրության պահանջներին:

Սահմանադրականացման գործընթացն ուսումնասիրվել է ինստիտուցիոնալ տեսանկյունից՝ պայմանականորեն այն դասակարգելով երկու հիմնական խմբի:

Առաջինը հանրային ծառայության ոլորտում գործող այն ստորաբաժանումներն են, որոնք օժտված են նորմատիվ-իրավական ակտերի նախագծերն իրավական փորձաքննության ենթարկելու իրավասությամբ: Այսպիսի փորձաքննության կարևոր նպատակներից է իրավաստեղծ մարմիններին և պաշտոնատար անձանց տրամադրել եզրակացություններ հիշյալ նորմատիվ իրավական ակտերի նախագծերում արտացոլված իրավանորմերի Սահմանադրության պահանջներին համապատասխանության վերաբերյալ:

Երկրորդ, ուսումնասիրվել են 2015 թվականի սահմանադրական բարեփոխումների արդյունքում իրավական դաշտի սահմանադրականացումն ապահովելու նպատակով սահմանադրական մարմիններին և Սահմանադրական դատարանին վերապահված առանձնահատուկ դերն ու նշանակությունը: Սահմանադրական դատարանը՝ որպես սահմանադրական վերահսկողության մարմին, կոչված է ապահովելու Սահմանադրության գերակայությունը, որն իրականացնում է վերացական և կոնկրետ վերահսկողությամբ:

Բանալի բառեր – *իրավունքի սահմանադրականացում, Սահմանադրության գերակայություն, սահմանադրականացման գործընթաց, իրավական փորձաքննություն, սահմանադրական վերահսկողություն*

НАРИНЕ ДАВТЯН – Актуальные вопросы конституционализации правовых норм в Республике Армения. – В статье рассматриваются вопросы конституционализации права в РА. Учитывая, что конституционализация права является одной из актуальных проблем современного конституционализма, что в настоящее время интересуют не только специалистов в области конституционного права, но и ученых, занимающихся проблемными вопросами других отраслей права, в

статье рассматривается процесс конституционализации, который имеет важное значение с точки зрения обеспечения верховенства Конституции и призван обеспечить соответствие нормативных правовых актов требованиям Конституции.

Процесс конституционализации был рассмотрен с институциональной точки зрения, который условно был разделен на две основные группы.

Во-первых, подразделения, действующие в сфере публичной власти, обладают полномочиями подвергать проекты нормативных правовых актов юридической экспертизе. Одной из важных целей такой экспертизы является предоставление правотворческим органам и должностным лицам заключений о соответствии нормативно-правовых актов требованиям Конституции.

Во-вторых, изучена роль и значение Конституционного Суда в сфере обеспечения конституционализации правового поля в связи с конституционными изменениями 2015 года. КС как орган конституционного контроля призван обеспечить верховенство Конституции, что осуществляется в рамках абстрактного и конкретного нормоконтроля.

Ключевые слова: *конституционализация права, верховенство Конституции, процесс конституционализации, правовая экспертиза*