Section 5. Constitutional law

DOI: <http://dx.doi.org/10.20534/EJLPS-17-2-26-30>

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Legal nature of Constitutional Court's decisions and its role in improvement of criminal procedure of legislation

Abstract: In this article, legal positions of the Constitutional Court's decisions were reviewed, positions of lawyer-scientists related to it, somewhat conflicting and different thoughts and discretions related to it were analyzed and generalized. Thought of, which Constitutional Court's decisions are the source of the criminal- procedural law was substantiated. Initial conditions of the settlement of this problem were determined on the basis of the analysis of the scientific positions for legal nature problem of the Constitutional Court's decisions. Classification of the Constitutional Court's decisions was given according to various reasons (features). The impact to legal regulation and the role in formation of the Constitutional Court's decisions in the field of criminal proceedings was investigated.

Keywords: Constitutional Court, decision, source of law, legal act, precedent, prejudice, legal position, legal regulation, criminal procedure law.

As it is known, Constitutional Court which is a relatively new legal institution in the field of justice proceedings of Azerbaijan Republic plays a key role in ensuring strengthening of democracy and the rule of law, as well as in protection of human rights and freedoms. So during the short period of its existence, the Constitutional Court reviewed a great number of petitions, applications and complaints, and adopted decisions aimed at the protection of human rights and fundamental freedoms.

If we have a look at the statistics of the decisions adopted on the Criminal Code, Criminal Procedure Code, the Civil Code and the Civil Procedure Code of Azerbaijan Republic on the basis of the requests and appeals to the Plenum of Constitutional Court of Azerbaijan Republic, we can see that on the basis of the request and the ap-

plications the Plenum of Constitutional Court of Azerbaijan Republic during 1998–2016 years (the first six months of 2016) adopted totally 126 decisions on the Criminal Code, the Criminal Procedure Code, Civil Code and the Civil Procedure Code. 41 of them were adopted on the basis of petitions and applications on Criminal Code, 35 on Criminal Procedure Code, 30 on Civil Code and 20 on Civil Procedural Code.

In the decisions made by the Constitutional Court in the criminal proceedings, this highest judicial body confirming guarantee of a number of democratic provisions of the citizens in the criminal processes extended them and helped to remove the obstacles in the way of guarantying important constitutional rights (right for liberty, the right to defense, the right to equality of parts, etc.)

The resolution of the issues about the place of the Constitutional Court's decisions in criminal procedure regulation mechanism is related, first of all, with determination of the legal nature of these decisions. However in the literature the issue about the legal nature of the Constitutional Court's decisions is still under discussion.

During investigation and analysis of the legal nature of the Constitutional Court's decisions, first of all, its analysis should be conducted in proportion and comparison with normative legal acts.

1. B. S. Abzayev notes that the Constitutional Court's decisions are not normative acts and cannot be represented in a precedent quality carrying normative-regulatory importance [1, P. 164].

2. N. A. Bogdanova shares the similar position, and indicates that the Constitutional Court's decisions are not source of law, because they do not have the recommendatory peculiarity as normativity. At the same time, these decisions may be considered source of knowledge. The author notes that "To consider the Constitutional Court's decisions as in the quality of normative acts contradicts with the state juridical conception" [2, P. 64–67].

3. T. G. Morshokova speaks about the interlocutory role of the Constitutional Court's decisions. The author believes that the Constitutional Court's decisions are not precedent from juridical point of view, they carry interlocutory character and are special type of interlocution. The author notes that the term "interlocutory" means that the fact that has been determined by the Constitutional Court and the essence of which is in determination whether some article corresponds to the Constitution or not cannot be further determined either by the Constitutional Court or other organs. And it indicates not precedent, but interlocutory nature of the decision [3, P.29; 20, P. 29].

N. V. Batuev notes that T. G. Morshakova's proposal about considering the Constitutional Court's decisions the acts reflecting interlocutory facts does not contradict with the concept of interlocutory

revised in law doctrine [4, P. 77; 2, P. 77]. The author considers that neither Constitution, nor the law "On Constitutional Court" provides an authority to accept normative-legal acts. And it is natural. The matter is that availability of the authority for implementation of juridical creativity would be contradictory against its assignment as a court body on constitutional control. Thus, the Constitutional Court in its essence is not a lawmaking body. Therefore, the decisions of the Constitutional Court cannot be normative legal acts. Besides it, the author notes that some peculiarities of the Constitutional Court's decisions give ground to speak about their likeness to normative juridical acts. The Constitutional Court's decisions are characterized by a special rule of preparation, acceptance, issue and coming into force, they have got special documentation form and structure. Implementation of the decisions of the Constitutional Court are mandatory for state authorities, local self-government bodies, enterprises, organizations and institutions, officials, citizens and their associations throughout all the country [4, P. 61; 2, P. 61].

For some authors these peculiarities of the Constitutional Court's decisions gave ground to say that these juridical acts carry normative character and that some of Constitutional Court's decisions refer to criminal procedure legal sources. For example, V. V. Lazerev thinks that the Constitutional Court's decisions are the legal source [5, P. 49; 16, P. 49]. T. A. Khabriyeva sharing the similar position indicates that the descriptions of the Constitutional Court's decisions refer to the highest rank of official statements and its decisions, although not being considered a law, have the power of law due to a number of parameters [6, P. 10–11; 27, P. 10–11]. N. V. Vitruk notes that as a rule, in Constitutional Court's decisions new regulatory criteria are formulated, "models" of essentially new legal norms are built [7, P. 54; 9, P. 54; 10). N. S. Bondar considers Constitutional Court's decisions as special court act where both normative and constitutional-doctrinal beginnings are involved [8, P. 75–85].

It should be noted that in the 2nd article of the Law of Azerbaijan Republic “On Normative acts” dated on November, 26, 1999 it is shown that “The normative legal act of Azerbaijan Republic is an official written document accepted by the authorized state organ with the indications of general mandatory character, determining, changing or annulling legal norms and intended for multiple use”.

The content of this concept allows to consider the decision of the Constitutional Court a normative-legal act. We should note that in the 3rd article of the Law “On normative legal acts” the decrees, instructions and directives of the Central Election Commission of Azerbaijan Republic; the decisions of local executive authorities and local self-government bodies; the decisions of the National Bank of Azerbaijan; resolutions of the National Television and Radio Council; the decisions of the Constitutional Court of Azerbaijan Republic are classified into the category of acts of normative character.

A. D. Boykov stated the following thoughts about the legal nature of the Constitutional Court: “Judging by the fact of the division of the authorities, the Constitutional Court proceeding cannot be related with lawmaking activity” [9, P. 78–79; 7, P. 78–79]. V. A. Petrushov shares the similar position. While researching legal nature of the acts adopted by the court and consisting of the description of the law the author notes that the court organs including Constitutional Court does not have an authority to create new legal norms. While implementation of the explanation of the Constitution and while adopting other decisions, Constitutional Court cannot create any norm [10, P. 54; 22, P. 54].

A. V. Grienko concludes that the Constitutional Court’s decisions are just the information sources of law. Developing this thought he noted that the information sources differ from normative-legal acts, first of all, for lack of the clearly expressed hierarchy. And it is conditioned with a number of reasons. 1) legal nature of the sources are different; 2) the sources can be used both by law executer and

legislative bodies; 3) degree of necessity of the articles determined in the information sources are not the same [11, P. 27].

On the conceptual basis of these views and opinions stands such a thesis that law is a dynamic and ever-developing event and it, of course, as a positive change in term of law allows to move beyond the narrow frame of normativizm. Indeed, the criminal procedure law is constantly being adapted to the needs of society and new useful updates are being adopted. Of course, not only updated legislation, but also the sources actively influencing on the legislative authority also create favorable conditions for the development of law.

Discussion on the legal nature of the Constitutional Court’s decisions is not limited with the disputes related whether these decisions are normative legal acts or not. According to some of the authors’ view, Constitutional Court’s decisions constitute a separate group of legal acts and they are characterized with normative interpretation, precedent and general compulsion.

V. A. Kryachkov and L. V. Lazarev in one of the textbooks call Constitutional Court’s decision “precedent-mandatory”: “The decision is precedent-mandatory for the Court itself. It brings stability and some order to the legal relations” [12, P. 239–240; 14, P. 239–240].

Thus, in the legal literature there are different positions regarding the place of the Constitutional Court’s decisions (resolutions) in the legal system. V. O. Luchin and O. N. Doronina note that the Constitutional Court “does not only interpret separate legal norms, but also forms constitutional — legal doctrine. Constitutional Court creates law in a known sense and framework” [13; 17].

A. A. Belkin’s position is of interest. He notes that it is appropriate to distinguish besides the primary sources of law, also the derivative legal sources. The author refers the decisions of the highest judicial authorities, as well as the Constitutional Court to the derivative sources of law, because in the Constitutional Court’s decisions, first of all, the

primary material existing in the Constitution and in other sources of law is used and description and interpretation of the constitutional and other articles are given in its resolutions. Besides it, the Constitutional Court adopts a decision in regard to concrete applications and acts, and it narrows the importance of law creating elements in the content of its resolutions, opinions and decisions, yet does not decrease them to null [14, P. 21; 3, P. 21].

As for the Constitutional Court's decisions being considered a special type of precedent, this issue is quite controversial.

As L.A. Morozova notes the judicial precedent (Lat. "leading", "previous") being a decision of the court on a particular case becomes a rule in resolution of analogous cases in future [15, P. 239–240; 19, P. 239–240].

The comments provide the basis for such a conclusion that the decrees of the Constitutional Court

and the legal positions which are parts of these decrees give an idea about the current state of the mechanism of regulation of valid Criminal Procedural legislation and criminal-procedural activity and allows to identify the directions for provision of human and civil rights and freedoms on a higher level and improving the efficiency of law and criminal proceedings. At the same time, it is necessary to note that the Constitutional Court cannot independently take the initiative to verify the correspondence of a criminal-procedural norm to the constitution, also cannot go beyond the scope of the particular complaint, request or inquiry.

The assignment of the Constitutional Court consists of review of the legal norms, as well as the provisions of the criminal procedure law to verify their correspondence with the constitution, it is not adaptation of the norms and provisions to the Constitution — it is the function of a legislature.

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