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CLASSIFICATION OF LAWS: REALITY AND PROSPECTS

Describing the lawmaking process, we should note that it is one of the most important aspects of the state activities, which has as its immediate goal the formation of legal norms, their amendment. In each state lawmaking has its own characteristics, but everywhere it is aimed at the creation and improvement of a single, coherent and consistent system of legal rules governing the society formed by various relations.

Problems of the lawmaking process have always attracted the attention of researchers. And there is no coincidence here, taking in the account the theoretical and practical significance of this activity of any state, and the fact that the notion of "lawmaking" has always taken one of the important places among the state-legal categories.

The adoption of the Constitution of Ukraine has made significant changes in the system of regulations, including laws. Substantive and procedural aspects of the construction and functioning of the legal acts of Ukraine pass literally through all the sections and chapters of the Constitution of Ukraine. The scale of this phenomenon suggests even a simple content analysis of text articles of the Basic Law of the State. It shows that more than half of the articles of the Constitution of Ukraine include a variety of repeated reminders on certain laws, including the form of direct links to them.

The provisions contained in the Constitution of Ukraine regarding the construction and operation of regulations affect its two structures - hierarchical and industry.

It is obvious that distinct lack of elaboration of the issue of classification laws can affect negatively on the adoption and execution of laws, on the issues of the relationship between different laws regulations.

The aim of the article is to study the problem of classification laws.

Today the actual problem in Ukraine is the enactment of the law on the normative acts, which would develop and define the classification of acts, their validity, order of adoption, entry into force and so on.

Making efficient use of a large body of laws which exist in every state requires an unambiguous understanding of their kinds, general and specific characteristics, the relationship between them.

The scientific definition of classification laws has not only an informative value. It takes the value of theory construction. Every law has a special place in all legal systems.

The Constitution of the USSR, like the fundamental laws of the union republics had been making provisions for the adopting by Supreme Councils relevant laws (laws and regulations of the USSR and Soviet Union republics), besides the notion of law was more "coherent", i.e., absent any division into types of laws at the time as foreign jurisprudence held such a graduation.

In foreign and domestic jurisprudence there are two ways to official classification of laws:

1) constitutional, when the constitutions fix lists of major regulations. For example, the Constitution of Austria includes part II "The Legislature Federation" [1, p. 30-46], the Constitution of Germany - part 7 "Federal law" [2, p. 180-189], the Constitution of Moldova - Art.72 [3, p. 210];

2) the publication of a special law on normative acts, which contains a list of acts and normative characteristics, the status in the legal system. For example, in Italy the "General Provisions on a Law" (1942), which list the sources of law: a law, regulations, corporate rule, norm-custom, and the limits of regulation of each act. In Bulgaria, the law "On Legal Acts" (1973) is functioning. It's interesting, that in Russia before the relevant federal law was passed, the law on normative acts in Yakutia (Sokha) had been enacted.

In Ukraine the problem of classification of regulations, including laws, is so far considered only on the doctrinal level. The Constitution of Ukraine applies a single term - "the law." In our opinion, introduction outside the Constitution in the current legislation of a separate status to certain laws is unreasonable and contrary to the Constitution. A particular type of a law cannot exist in the legislation of Ukraine without fixing its status in the Constitution. This can lead to complications in legislative process and legal theory. The number of researches are the proponents of this position: A. Zayets', M. Koziubra, V. Kostytsky and others.

The most important criterion for division laws into types is their legal authority. The laws have the highest legal authority in the legal system. However, this feature allows making not only an external but also an internal dividing line between laws and other legal acts. From this perspective, there are three main groups of laws as a sort of sub-systems: the Constitution, constitutional laws, and ordinary laws. The literature expresses a point of view that in addition to these kinds of laws on the legal force can be identified as organic laws.

The integrity of the legal regulation does not preclude the establishment of specific actions of certain laws and certain compatibility. Differentiation of laws occurs primarily by subject basis, by the terms of social relations that governed them, their place in the legal system and the legal system as a whole.

Of course, the Constitution of Ukraine takes not only a leading position in all the system of legislation, but among the laws too is, being is the main law that having the highest authority force. Understanding the Constitution as the Basic Law was formed gradually. Any social order requires constant system whereby its will would be expressed and carried out, the scope of its activities would be limited, the position of members in the unity would be determined in the integrity of their relationship [4, p. 5].

In domestic legal theory the notion "constitutional law" is relatively new. The term "constitutional law" was used by classics of constitutional law, however not in the sense of a special category of laws, but to highlight the Basic Law, as the term

"constitution" was not used. There are proponents of this understanding of constitutional laws among the modern constitutionalists.

Recently, there has been a trend towards the use of constitutional laws as an important means of regulating constitutional legal relations.

What is the "constitutionality" of certain laws? There are various approaches and views on the concept of the role and purpose of constitutional law.

For a long time discussions on this subject were only theoretical, since the legislation of the former Soviet Union made no indication at any laws as constitutional.

Some scholars, considering the problem of constitutional law, offer to proceed from formal, others - from their substantive characteristics [5, p.57].

Most scholars are inclined to think that the Constitution should include a clear list of constitutional laws as an optimal variant.

In Ukraine, in the absence of constitutionally provided classification of laws, the legal status of a constitutional law is problematic. The Constitution of Ukraine does not introduce any gradation of laws on the basis of their legal authority, as some scientists are trying to do. It is clear that the classification should be based on the Constitution of Ukraine. In practical researches sometimes a number of names such as organic laws, codes, constitutional laws and so on are used. In our opinion, such a classification has no constitutional grounds. The Constitution of Ukraine applies a single term - "the law", which is taken under a single procedure. This is why the introduction of a separate status (order acceptance, relationships with other acts) outside the Constitution to certain laws of the current legislation is unreasonable and contrary to the Constitution. Some believe that the way out of this situation is possible if the special regulations identifying the status of a constitutional law would be enacted. And, in our view, it would be the best option in this case. But as you know, such a law has not yet been adopted, although the appropriate draft has been under consideration in Parliament for a long time.

Most local scientists today express the opinion of the need for the legal system of Ukraine of laws having a different legal authority [6, p.125]. However, their positions on the status of these laws are different.

Article 20 of the Constitution of Ukraine contains a provision that the description of the state symbols and their application are established by a law adopted by no less than 2/3 of the Verkhovna Rada of Ukraine.

Obviously, the laws, devoted to important attributes of the state, its symbols should be adopted under the complicated procedure in comparison with the laws that are adopted by the general rule by a majority vote of deputies. This procedure is typical for the adoption of bills that change the Constitution, because we believe that they, too, can be classified as constitutional law. It follows that the norms of the Constitution of Ukraine allocated a special category of laws that, at least under this sign are different from other laws mentioned in the Constitution. In terms of features, value can be attributed to constitutional law.

Analyzing domestic and foreign laws, and monographic literature, one can observe that modern jurisprudence and practice began to pay much more attention to an organic law as a structural element of the system of normative acts. Basic laws of many countries have established a hierarchy of laws, top of which holds the constitution, below the constitutional laws are placed, after them - organic laws, and

even lower - ordinary laws. However, treatment to organic laws, determination of their purpose, nature, object and process of adoption are ambiguous. In our opinion, this is due to the fact that the organic law is a relatively new phenomenon in the system of laws. In none of the former Soviet Union' countries, in many foreign countries, let alone in Ukraine, organic laws are not given proper place.

It seems appropriate introducing to the legal system of Ukraine particular type of an organic law, the adoption of which would be provided by the Constitution of Ukraine and would come out with its content.

Organic laws could be called laws, developing the important provisions of the Constitution of Ukraine, for which a special clause in the text exists. The procedure for the adoption of an organic law should be more complicated compared with the procedure for an ordinary law, but simpler than for a constitutional law, – 50% +1 vote of the constitutional composition of the Verkhovna Rada of Ukraine. It is clear that the introduction of this type of laws as organic, seems almost impossible today, as the Constitution of Ukraine contains a provision according to which all other laws than those which make amendments to the Constitution, adopted in the same manner that a majority of the constitutional composition of the Verkhovna Rada of Ukraine.

It would be reasonable to change the cited above clause. It would be a more harmonious and a logical hierarchy of laws that would call off the contradictions mentioned above.

Ordinary laws have the largest share in the system of legal acts of the legislature. These regulations, adopted by the Verkhovna Rada of Ukraine, contain primary legal norms and regulate social relations in certain areas in accordance with the Constitution. This is significant in number and mobile group of laws adopted by a simple majority vote. If the amendments to the Constitution of Ukraine entrenching the hierarchy of laws are enacted, ordinary laws will be adopted by the majority of people's deputies, present in the parliament chamber.

Important role in the legal system of Ukraine and the system of normative acts occupy the laws adopted by national referendum that result from the direct will of the people, which do not require approval by any governmental body, and that gives them a special significance. Regarding the validity of laws passed by referendum, there are several points of view. One is that laws passed by referendum and laws passed by Parliament are equally authoritative. This position follows A. Mickiewicz [7, p.124].

The second view is to understand the higher legal authority of laws adopted by national referendum over the act of parliament. According to Art. 3 of the Law "On national and local referendums", subject to referendum may be, in particular, the adoption, amendment or repeal of the laws of Ukraine or their provisions. These acts could hardly be regarded as acts of the legislature. Some reservations may be made only by the fact that all kinds of national referendums can be appointed only by the Act Parliament of Ukraine. However, it is not possible to recognize the authority deciding the appropriate law-making process [8, c.27-34].

If one stands on this position, the laws passed by referendum contain directly expressed will of the people, who are the only source of power. The specific of these laws is also a special order of amendments or cancellation. This procedure is implemented by referendum, but may be carried out by the Verkhovna Rada of Ukraine, but not less than 2/3 of the total number of deputies of Ukraine and should

be approved in a referendum to be conducted within 6 months after the introduction or withdrawal [9]. It should be noted that by this time in Ukraine no laws have been adopted by referendum.

The system of laws includes such an important kind of them, as codes. Some scholars, noting the existence of a hierarchy of laws, allocate it:

1) constitutional laws, 2) codes, and 3) current laws [10, p.512].

There is no doubt that the codes governing special range of public relations, have long-term effects, the universality of application. A feature of these laws is that they occupy a leading place in the legislation and are systematized documents. A code is a complete set of rules needed for a comprehensive, complete, concrete and effective regulation of social relations.

Being an enlarged normative act and the concentration of a large number of specific legal rules, codes not only successfully act as regulators of its range of public relations, but also reduce the number of possible normative acts, absorbing their own laws.

It would be logical to change the procedure for adoption of codes that could be a bit more difficult in comparison with traditional laws. The procedure for the adoption of codes could be equated to the adoption of organic laws.

Thus, in order to improve the legislative and strengthening the rule of law in the system of regulations there is a need to amend the Constitution of Ukraine on the decision of various kinds of laws.

Building a more hierarchical system of laws than the present one, would positively influence the development and improvement of the legal system and the rule of law in Ukraine.

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