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ENSURING THE CONSTITUTIONALITY OF NORMATIVE ACTS AS A FUNCTION OF THE REGULATIONS OF THE VERKHOVNA RADA OF UKRAINE: SOME THEORETICAL, LEGAL AND APPLIED ASPECTS

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Abstract. The subject of the study is a theoretical and legal analysis of the functional orientation of the Rules of Procedure of the Verkhovna Rada of Ukraine (hereinafter – the Rules) in the area of ensuring the constitutionality of normative acts. **The research methodology** is based on a combination of general scientific and special scientific methods selected with due regard for the purpose and subject matter of the study. The dialectical method was used to study the existing trends in scientific cognition of the role of the Rules of Procedure in parliamentary procedures. The methods of analysis and synthesis ensured the identification of regulatory provisions dedicated to ensuring the constitutionality of normative acts and their organization in the form of a single system of activities of the authorized subjects of the legislative procedure. The hermeneutic method helped to interpret the content of the regulatory provisions aimed at ensuring the constitutionality of normative acts. The systemic and structural method helped to identify the stages of regulatory support for the constitutionality of normative acts. The application of the prognostic method made it possible to identify problematic issues in the regulatory framework for ensuring the constitutionality of normative acts and to formulate legal and technological approaches to solving problems in this area. **The purpose** of the study is to provide a theoretical and legal assessment of such a little-known legal phenomenon as ensuring the constitutionality of normative acts – as a special legal function of the Rules of Procedure. The results of the study prove the objectivity of singling out such a function of the Rules as ensuring the constitutionality of normative acts and demonstrate the dialectic of its implementation at different stages of the legislative procedure, and identify certain legal issues in this area. **Conclusions**. One of the key functions of the Rules of Procedure of the Verkhovna Rada of Ukraine is the function of ensuring the constitutionality of normative acts, primarily laws. The realization of this function is systematic and progressive, being traced at different stages of the legislative procedure. It makes it possible to characterize the participation of the Verkhovna Rada of Ukraine in constitutional control over the constitutionality of laws as a highly specialized legal activity of authorized subjects, which is carried out within the structure of the legislative procedure and has the nature of preventive control, covering mainly different stages of preparation and consideration of draft laws. The main

problems in this area are objective (such as fragmentary gaps or insufficient clarity of regulatory norms to ensure such constitutionality) and subjective (such as arbitrariness of the legislator's consideration of scientific, expert and legal opinions on the unconstitutionality of certain provisions contained in newly adopted laws and dominance of political interests over legal ones). At the same time, the logic of the presentation and the content of the regulatory provisions make it possible to comprehend the ways of optimizing some of its provisions with a view to exercising stricter internal parliamentary control over the constitutionality of laws in order to minimize the effort required for a possible challenge of such acts to their constitutionality before the Constitutional Court of Ukraine.

Key words: legal acts, Constitution of Ukraine, constitutionality, Verkhovna Rada of Ukraine, Rules of Procedure of the Verkhovna Rada of Ukraine, parliamentary procedures, legislative procedure, expertise, veto of the President of Ukraine.

Introduction. In modern jurisprudence, the constitutionality of normative acts is rightly considered one of the criteria for the rule of law and stability of the entire legal system of the state (Riznyk, 2021, 14). This is a kind of measure of the quality of legal matter concentrated in legal acts. As both an objective and official legal phenomenon (Riznyk, 2021, 12), their constitutionality requires a system of proper enforcement by authorized legal entities. Outside of this system, it is not possible to maintain the constitutionality of such acts. Therefore, it is fair to conclude that, in the end, "the rule of law is impossible in principle without a system of ensuring the constitutionality of normative acts" (Riznyk, 2021, 1).

The opposite of such constitutionality is the phenomenon of unconstitutionality of normative acts, which, according to S. Riznyk, "is a legal act. Riznyk, "is a legal defect that has a harmful effect on the functioning of the state and society, distorts its purpose, poses a danger to democracy, the rule of law and human rights, and therefore needs to be clarified and eliminated in order to achieve internal coherence of the entire legal system and social consensus" (Riznyk, 2021, 12). Counteracting this legal defect is a fundamental, scientifically based theoretical and applied task of modern general theoretical jurisprudence and a number of branch legal sciences, and also requires more active use in practice of the entire arsenal of special legal means available to lawmakers and law enforcement officers. Meanwhile, in the modern legal literature, a kind of consensus has emerged on the decisive (sometimes exclusive, especially significant) role of constitutional jurisdiction bodies (mostly constitutional courts of nation-states) in ensuring the constitutionality of such acts (Riznyk, 2021, 15). While we fully agree with this conclusion, we must nevertheless warn against the simplistic notion that the function of ensuring the constitutionality of normative acts is exhausted by the activities of these bodies. In fact, constitutional courts, given their functional purpose and competence, constitute only one, albeit central, leading, decisive link in the institutional system of ensuring the constitutionality of normative acts. Legal scholars also include presidents, parliaments, as well as courts of general jurisdiction and some other subjects of law in this system (Vodiannikov, 2023; Hrabchuk, 2018; Dubrova, 2011; Prydachuk, 2014; Riznyk, 2021, 7). The Ukrainian experience provides convincing evidence that the current constitutional model of the Constitutional Court of Ukraine does not "allow us to speak of an absolute monopoly of the constitutional jurisdiction body in determining the compliance or non-compliance of a legal act with the Constitution" (Vodiannikov, 2023, 10).

Legal grounds for distinguishing the regulatory support for the constitutionality of normative acts

However, in addition to the institutional side, ensuring the constitutionality of normative acts also has a purely normative (or rather, regulatory) side, which covers the existence of a complex of specialized legal norms that determine the activities of special state institutions in the field of guaranteeing the constitutionality of normative acts. One of such acts in the system of national legislation

is the Rules of Procedure of the Verkhovna Rada of Ukraine, approved by the Law of Ukraine of February 10, 2010 (hereinafter – the Rules) (On the Rules, 2010), which contains an ordered and interconnected set (system) of legal norms aimed at ensuring the constitutionality of the process of preparation and entry into force of normative acts adopted by the Verkhovna Rada of Ukraine as the sole legislative body in the state (Article 75 of the Constitution of Ukraine (Constitution of Ukraine, 1996). No other normative act plays such a role in the legislative activity of the Verkhovna Rada of Ukraine, which makes the Rules of Procedure a unique legal phenomenon in the system of national legislation that ensures "self-control" of the Parliament (according to Polish researcher A. Gwizdz. Gwizdz, 1971, 5) in terms of the constitutionality of the laws adopted by it as acts of supreme legal force, which are the basis for almost the entire system of state legislation and which are the most important sources of law in most national legal systems in the world today (Gunko, 2020, 72).

Such a special legal role of the Rules of Procedure indicates that it performs a specific function – the function of ensuring the constitutionality of normative acts, and also mediates the activities in this area of both the Verkhovna Rada of Ukraine as a whole and elements of its constitutional "design": the leadership (the Chairman of the Verkhovna Rada of Ukraine, his First Deputy and Deputy Chairman of the Verkhovna Rada of Ukraine), committees of the Verkhovna Rada of Ukraine, MPs of Ukraine and subdivisions (services) of the Secretariat of the Verkhovna Rada of Ukraine, whose functional orientation is in one way or another related to the constitutionality of normative acts. These elements are integral and constructive elements of the institutional side of the system of ensuring the constitutionality of legal acts at the level of the Verkhovna Rada of Ukraine.

A comprehensive theoretical and legal analysis of the content of the regulatory norms confirms that this legal act embodies the principle of presumption of constitutionality of laws adopted by the Verkhovna Rada of Ukraine. According to this principle, "a legal act is deemed to be in compliance with the Constitution of Ukraine and has legal force until it is declared unconstitutional by a separate decision of the constitutional control body. Therefore, the category of constitutionality is a rebuttable presumption" (Vodiannikov, 2023, 12; Sunstein, 1995, 963). This principle is also enshrined in paragraph 1 of part three of Article 151 of the Code of Administrative Procedure of Ukraine (Code, 2005), which is directly addressed to the activities of the Parliament of Ukraine.

Main areas of realization of the function of the Rules of Procedure to ensure the constitutionality of normative acts

In the context of parliamentary procedures, two key areas of implementation of the function of the Rules of Procedure to ensure the constitutionality of normative acts adopted by the Verkhovna Rada of Ukraine should be distinguished. First, the Rules of Procedure perform this function in relation to the laws of the highest legal force – laws amending the Constitution of Ukraine (Articles 141–151 of the Rules of Procedure (On the Rules of Procedure, 2010), the procedure for adoption of which must be flawless from the constitutional point of view. Secondly, the Rules of Procedure perform the same function in relation to all other laws adopted by the Verkhovna Rada of Ukraine as the sole legislative body in Ukraine (Articles 89–135 of the Rules of Procedure) (On the Rules of Procedure, 2010). This approach is in line with the distinction between laws according to their legal force, which is generally accepted in legal science (Gunko, 2020, 71).

Of the two areas of implementation of the constitutional-securing function outlined above, the first one is extraordinary, since amendments to the Constitution of Ukraine are usually prepared, considered and introduced under a particularly complicated procedure and in exceptional cases, while the second area is an ordinary legislative procedure, during which conditions should be ensured for the adoption of only laws that comply (do not contradict) the Constitution of Ukraine.

Two significant clarifications should also be made regarding the scope of the aforementioned function of the Rules of Procedure: first, given its substantive focus on regulating parliamentary proce-

dures, this function applies exclusively to normative acts adopted by the Verkhovna Rada of Ukraine, and second, it applies not only to laws but also to other normative acts of the Parliament, which are only resolutions containing provisions of a normative nature (part two of Article 46, paragraph 1 of part six of Article 89 of the Rules of Procedure) (On the Rules of Procedure, 2010).

The systematic implementation of this function of the Rules of Procedure is based on a number of interrelated legal provisions of both the Rules of Procedure and systematically related regulations of different legal force.

Given the specifics of the procedure for consideration of draft laws amending the Constitution of Ukraine, we will focus here exclusively on the key legal and technological aspects of ensuring the constitutionality of laws in the course of the ordinary legislative procedure based on the analysis of the relevant regulatory provisions.

The main stages of realization of the function of regulatory support of the constitutionality of normative acts

Thus, according to the second part of Article 8 of the Fundamental Law of the State, "The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts shall be adopted on the basis of the Constitution of Ukraine and shall comply with it" (Constitution, 1996). From these formulations it follows that the subjects of the right of legislative initiative are directly obliged to submit to the Verkhovna Rada of Ukraine draft laws that comply (do not contradict) the Constitution of Ukraine (Husarov, 2015; Mudra, 2003; Ryshelliuk, 2004). This is the main substantive criterion that should guide the subjects of the right of legislative initiative (part one of Article 93 of the Constitution of Ukraine (Constitution, 1996), avoiding the practice of submitting deliberately unconstitutional drafts or drafts whose individual provisions are deliberately unconstitutional, i.e., those that directly (explicitly) contradict the provisions of the Basic Law of Ukraine. This lawmaking approach is guided by the provision of part one of Article 90 of the Rules of Procedure, according to which a draft law or other act must be drawn up in accordance with the requirements of the law, these Rules and other regulations adopted in accordance with them (On the Rules of Procedure, 2010). This refers to the provisions of the Law of Ukraine "On Lawmaking", as well as the provisions of the Rules for Drafting Laws and Basic Requirements of Legislative Technique (Methodological Recommendations) prepared by the Verkhovna Rada of Ukraine (Rules). However, neither the Law of Ukraine "On Lawmaking" nor these Rules reflect at least formalized criteria (indicators) of constitutionality of normative acts that would serve as a kind of value and normative guidelines in the course of legislative activity of the Parliament of Ukraine. The next mandatory element of ensuring the constitutionality of a normative act is its legal examination, which precedes its substantive consideration by the Verkhovna Rada of Ukraine (its committees). Such examination is mandatory, as follows from part one of Article 103 of the Rules of Procedure (On the Rules of Procedure, 2010). It is carried out at the initial stage of consideration of the draft law by the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine (hereinafter – MSED). In accordance with the Methodological Recommendations on Conducting Legal Expertise of Draft Legal Acts, approved by the Resolution of the Board of the Ministry of Justice of Ukraine of November 21, 2000, No. 41, the main issue is to ensure that the draft act complies with the Constitution of Ukraine (Methodological Recommendations, 2000). The STEU answers the fundamental question: whether the submitted draft law complies with the Constitution of Ukraine; if not, in which parts, provisions and articles, and what exactly is the reason for such a discrepancy (Koshman).

Further, in accordance with paragraph 1 of part two of Article 94 of the Rules of Procedure, the committee of the Verkhovna Rada of Ukraine, which is responsible for constitutional law issues, prepares a conclusion on whether the draft law complies or contradicts the provisions of the Constitution of Ukraine (except when it concerns amendments to the Constitution of Ukraine) (On the Rules of

Procedure, 2010). The functioning of such a committee within the parliamentary structure is an element of the institutional mechanism for ensuring the constitutionality of acts adopted by the Verkhovna Rada of Ukraine. In the Verkhovna Rada of Ukraine of the IX convocation, this is the Committee on Legal Policy, whose subject matter includes "assessment of compliance of draft laws and other acts of the Verkhovna Rada of Ukraine with the Constitution of Ukraine" (On the List, 2019). The conclusion of this Committee is mandatory for consideration by the Chairman of the Verkhovna Rada of Ukraine or, in accordance with the division of duties, by the First Deputy, Deputy Chairman of the Verkhovna Rada of Ukraine, who are obliged, if this Committee recognizes the draft law as not complying with the Constitution of Ukraine, on the proposal of the main committee or temporary special commission or the Conciliation Board, to return the submitted draft law to the subject of the right of legislative initiative without its inclusion in the agenda of the session and consideration at the plenary meeting of the Verkhovna Rada. Thus, there are grounds to refute the conclusion of O. Bukhanevych and A. Ivanivska about the alleged lack of authority "to exercise preliminary constitutional control over the committees of the Verkhovna Rada of Ukraine" (Bukhanevych, Ivanivska, 2021, 64).

It is worth noting that the Rules of Procedure do not define the legal consequences of the failure of the main committee, temporary special commission or Conciliation Board to make the above-mentioned proposal, which could hypothetically lead to the ignoring of the conclusion of the committee whose jurisdiction includes issues of constitutional law, if it is not the main committee in the consideration of a particular draft law. This, in a way, diminishes the importance of ensuring the constitutionality of normative acts at this stage of the legislative procedure.

It is worth noting that the authors of the Rules of Procedure further constructed a three-stage (three readings) legislative procedure for consideration and adoption of laws as normative legal acts regulating the most significant, most important social relations by establishing generally binding rules (norms) (Methodological Recommendations, 2000). Such a complicated legal model of the legislative procedure should obviously serve as an additional institutional safeguard against the adoption of unconstitutional legislation by the Ukrainian parliament.

Thus, already at the stage of consideration of a draft law in the first reading, the Verkhovna Rada of Ukraine may reject the draft law or return it to the subject of the right of legislative initiative for revision or send it to the main committee for preparation for a repeated first reading, while defining the main provisions, principles, criteria that the revised draft law or its structural parts must meet (part one of Article 114 of the Rules of Procedure) (On the Rules of Procedure, 2010). At the same time, the Rules of Procedure do not clearly state the reasons for which a draft law may be rejected or returned to the subject of the right of legislative initiative, leaving this issue entirely at the discretion of the legislator. However, a systematic interpretation of the relevant regulatory provisions reveals that one of such legal reasons may be the unconstitutionality of its provisions, which prevents a positive decision to adopt the draft law as a basis in the first reading. An argument in favor of rejecting or returning a draft law on the grounds of unconstitutionality may be the conclusion of the LEA or the main committee or committee in charge of constitutional law issues that the provisions contained in the draft law are unconstitutional. At the same time, it is possible that, for one reason or another, the Verkhovna Rada of Ukraine will not heed the expert opinions and will adopt the draft law in the first reading even if it contains certain unconstitutional provisions. Unfortunately, such cases still occur and demonstrate the generally low level of legal awareness of parliamentarians and low attention to scientific and expert opinions prepared by parliamentary lawyers – and this is despite the fact that according to part five of Article 103 of the Rules of Procedure, such "opinions prepared on the basis of the results of the examination shall be sent to the main committee for consideration when considering the draft law and making a decision on further work on it" (On the Rules of Procedure, 2010). Failure to take these conclusions into account poses a significant problem, as constitutional defects in draft laws identified during the examination often have to be corrected at subsequent stages of the legislative procedure.

The constitutionality of laws is ensured, in addition to mandatory, by optional legal expertise, which the Verkhovna Rada of Ukraine may entrust to other state bodies or specialists (Articles 97, 103, 145 of the Rules) (On the Rules, 2010), in particular to specialists of the National Academy of Sciences of Ukraine, as well as the Cabinet of Ministers of Ukraine, relevant ministries, other state bodies, institutions and organizations or individual specialists (Article 103(3) of the Rules) (On the Rules, 2010), "which facilitates a comprehensive review of the provisions of the draft law" (Rybikova, 2017, 112), including its constitutionality.

Thus, in order to prevent the appearance of unconstitutional provisions in a draft law, the subjects of the right of legislative initiative may submit proposals that may relate to certain provisions of the draft law (part one of Article 116 of the Rules of Procedure) (On the Rules of Procedure, 2010). However, even such proposals may contain unconstitutional provisions. In order to prevent their appearance in the text of the draft law, pursuant to part four of Article 118 of the Rules of Procedure, such proposals are identified, left without consideration and not included in the comparative table based on the conclusion of the committee in charge of constitutional law that the proposal to the draft law contradicts the requirements of the Constitution of Ukraine. Such a conclusion is provided by the committee in charge of constitutional law issues upon request of the main committee within 14 days from the date of receipt of the request (On the Rules of Procedure, 2010).

In accordance with the sixth part of Article 118 of the Rules of Procedure, a mandatory legal examination is conducted by the Main Legal Department of the Verkhovna Rada of Ukraine (On the Rules of Procedure, 2010). It is clear that an element of such expertise, as well as scientific expertise before the first reading, is the compliance of the provisions of the draft law with the Constitution of Ukraine (Constitution, 1996), which is reflected in the relevant legal opinion, which becomes part of the draft law file and the content of which is communicated to the MPs of Ukraine. Therefore, when deciding on the adoption of a draft law in the second reading (as a rule, this reading is the end of the consideration of a draft law by the Verkhovna Rada of Ukraine, and the third reading is practically not used), the Verkhovna Rada of Ukraine should take into account the views on the risks of unconstitutional provisions in the draft law. Failure to take into account the comments of the scientific and expert and/or legal departments of the Verkhovna Rada of Ukraine often manifests itself at the stage of challenging the constitutionality of adopted laws in the Constitutional Court of Ukraine.

Some experts have suggested that it is advisable to combine scientific and legal expertise in a single structural unit of the Verkhovna Rada of Ukraine on the grounds that there are no significant differences in these expertise and that the same experts should support draft laws at all stages of the legislative procedure (Antoshchuk, 2007, 42; Rybikova, 2017, 111–112). We object to this idea, considering it unproductive: firstly, separate expertise has proven itself well during the functioning of the national parliamentarism since 1991, they actually contribute to a more balanced and impartial approach to the issue of ensuring the constitutionality of the draft law material, and their results do not cause serious complaints from the subjects of the right of legislative initiative, and, secondly, being performed by different specialists, the results of such expertise will always be more independent than they are performed by the same legal experts.

It is worth noting that the Rules of Procedure do not explicitly provide for the possibility of canceling the results of voting for the adoption of a draft law as a law in case of violations of the constitutional procedure for adopting laws. Instead, in part three of Article 130 of the Rules of Procedure, it provides for such a possibility only in case of violations of the legislative procedure provided for by these Rules (On the Rules of Procedure, 2010). However, taking into account the repeatedly expressed legal positions of the Constitutional Court of Ukraine (paragraph two of item 2 of the reasoning part of the Decision of July 12, 2000 № 9-rp/2000; paragraph five of item 2 of the reasoning part of the Decision of January 25, 2001 № 1-up/2001; paragraph one of item 3 of the reasoning part of the Decision of July 14, 2011 № 35-y/2011; paragraph three of item 2 of the reasoning part

of the Decision of December 27, 2011 № 65-y/2011; paragraph one of subpara. 3 of paragraph 2 of the reasoning part of the Decision of September 17, 2015 No. 41-y/2015; first paragraph of subparagraph 2.1.2 of subparagraph 2.1 of paragraph 2 of the reasoning part of the Decision of July 6, 2017 No. 12-y/2017; second paragraph of paragraph 5 of the reasoning part of the Decision of July 16, 2019 No. 10-p/2019) (Decision, 2021), it should be noted that procedural violations of a constitutional and regulatory (legislative) nature are not identical. At the same time, it is obvious that procedural violations of a constitutional nature are more dangerous, since according to part two of Article 153 of the Constitution of Ukraine, laws are recognized as unconstitutional if the procedure established by the Constitution of Ukraine for their consideration, adoption or entry into force has been violated (Constitution, 1996). In this regard, the wording of part three of Article 130 of the Rules of Procedure, in our opinion, should be revised to expand it – with an additional reference to violation of the procedure for consideration and adoption of laws established by the Constitution of Ukraine as a legal basis for initiating the issue of canceling the results of voting for the adoption of the draft law as a law.

Finally, an element of ensuring the constitutionality of the laws of Ukraine is the possibility of the President of Ukraine to veto a law adopted by the Parliament of Ukraine. Neither the Constitution of Ukraine nor the Rules of Procedure clearly stipulate the grounds for the use of this right by the head of state. However, as far as practice shows, one of the most common legal reasons for its use is a violation of the requirement of compliance with the Constitution of Ukraine in the adopted law, which is what the President of Ukraine draws attention to when formulating his proposals to the law. These reasons for the use of the suspensive veto are also rightly pointed out by scholars (Bahriak, 2016, 9,14). The return of such a law with proposals formulated by the head of state (which, as a rule, are specific and may, in particular, relate to the unconstitutionality of either certain provisions of the newly adopted law or the unconstitutionality of the law as a whole) entails the cancellation of the results of voting for such a law and the opening of the procedure for its reconsideration in the Verkhovna Rada of Ukraine (part one of Article 132 of the Rules of Procedure (On the Rules of Procedure, 2010). Article 133 of the Rules of Procedure (On the Rules of Procedure, 2010) stipulates the need to assess the proposals of the President of Ukraine by the STEU for their constitutionality, as these proposals of the head of state may contain certain unconstitutional provisions. Thus, at the stage of consideration of the proposals of the President of Ukraine, their consideration is again accompanied by a scientific examination of the constitutionality of the proposals submitted by the head of state. When adopting a new version of a law or rejecting the proposals of the head of state, the Verkhovna Rada of Ukraine proceeds primarily from the need to ensure the constitutionality of the new law, its consistency with the norms and principles laid down in the Fundamental Law of the state.

Conclusions. As follows from the foregoing, one of the key functions of the Rules of Procedure is the function of ensuring the constitutionality of normative acts, primarily laws, as the main type of decisions adopted by the Verkhovna Rada of Ukraine as the sole legislative body in the State.

The implementation of this function is systematic and progressive, being traced at different stages of the legislative procedure, which makes it possible to guarantee the constitutionality of adopted acts at least ideally. It makes it possible to characterize the participation of the Verkhovna Rada of Ukraine in constitutional control over the constitutionality of laws as a highly specialized legal activity of authorized subjects, which is carried out within the structure of the legislative procedure and has the nature of preventive control, covering mainly different stages of preparation and consideration of draft laws.

At the same time, problematic aspects in this area include arbitrary consideration of scientific, expert and legal opinions on the unconstitutionality of certain provisions contained in newly adopted laws, dominance of political interests over legal ones in the course of lawmaking, as well as gaps or insufficient clarity of regulatory norms to ensure such constitutionality.

In legislative practice, there are almost no cases of recognizing laws of Ukraine as unconstitutional in their entirety, which generally supports the conclusion that ordinary laws take into account constitutional norms and principles at a relatively high level.

At the same time, the logic of presentation and content of the regulatory provisions allow us to consider ways to optimize some of its provisions in order to exercise stricter internal parliamentary control over the constitutionality of laws in order to minimize the effort required to challenge such acts on the grounds of their constitutionality before the Constitutional Court of Ukraine.

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