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HIGHLIGHTING THE CRITERIA OF A NON-LEGAL LAW AFFECTING ITS APPLICABILITY BY THE COURT

Abstract. ***The purpose of the article*** is to study procedural actions of courts to identify the criteria of a non-legal law affecting its applicability in the case; to reveal the grounds and procedure for distinguishing the criteria of a non-legal law affecting its applicability by courts in their procedural actions.

The following ***research methods*** were used: systems method, generalization, dialectical, hermeneutic, and prognostic methods of scientific knowledge.

Results. The doctrine contains many approaches to the formation of the concept of "a non-legal law": from the absolute nullity of the law to the injustice of its individual provisions for the subject of private relations, but the possibility of applying the law to ensure the common good (public interest). The absolute nullity of laws as non-legal, i. e., the regulation on the invalidity of the law as a whole or its individual norms from the very beginning belongs to the exclusive constitutional functions of the Constitutional Court of Ukraine according to the procedure of consideration of cases. At the same time, the statement (conclusion) on the court decision about the law's inconsistency with the Constitution of Ukraine actually makes the law disputable. Consequently, the law is not applied only if it justified by the party and the judge takes into account its position since its arguments and the court's motives coincide; or the court reaches the above conclusion independently.

Conclusions. It is proved that the statement (conclusion) of the court in the judgment on the contradiction of the law of the Constitution of Ukraine turns the law into a disputed one. The law does not apply only if it is justified by the party to the dispute and the judge takes into account the position of the party, as its arguments and motives of the court (based on the court's internal conviction) coincide; or the court independently comes to the conclusion that the law of the Constitution of Ukraine is contradictory. The criteria of obvious contradiction of the Constitution of Ukraine, which characterizes the law as non-legal, are singled out: a) defects of content; b) defects of the hierarchy; c) defects of the subject; d) defects of temporal significance; e) addressing defects; f) implementation defects. There are also some criteria of potentially non-legal laws – the presence of elements of unjust provisions, but their contradiction with the Constitution of Ukraine is not obvious: 1) defects in content are not obvious; 2) defects of content due to changes in legislation; 3) form defects. It is substantiated that in terms of applicability or inapplicability of norms of the Basic Law of Ukraine in the court decision, there are procedural actions which can be divided into two groups, interconnected and covering by their scope: a) actions to establish the contradiction of the law or other normative act to the Constitution of Ukraine through the court's obligation to check the rule of law and other normative legal act for its compliance with the Constitution of Ukraine during judicial enforcement; b) actions to settle the issue of application by courts of a formally valid normative legal act that has not declared unconstitutional but contains unjust provisions (through the prism of assessing the unfairness of legal provisions in the opinion of the party or the court).

Key words: Constitution of Ukraine, court, legal law, obvious contradiction of law to Constitution of Ukraine, potentially non-legal law, unfair law provisions, procedural actions.

1. Introduction

The courts' application of norms of the Constitution of Ukraine as norms of direct action is one of the manifestations of the rule of law. Therefore, in applying the relevant norms, the courts should be particularly balanced, moderate, and aware of the consequences of both the constitutionalization of legal provisions regarding

which there are reasonable (or not) doubts of the trial parties or the court and their disqualification by the court in case of a conclusion about the application of norms of the Constitution of Ukraine. The purpose of justice is to ensure the rule of law in a broad sense. The study of the peculiarities of determining law criteria, which, according to the court opinion, may contradict the Constitution of Ukraine, should begin with identifying the features of such laws. We believe it is about the law's such features as injustice, illegality, unlawfulness, and hence (or a parallel criterion, in particular, in the case of absolute injustice of the law), contradiction of the Constitution or unconstitutionality. In this context, it seems important that a court or judge concludes the unconstitutionality of a particular law in the judgment on behalf of the court only as his own conviction with the words "contradicts...". This is due to the fact that under the distribution of constitutional competence between the courts and the Constitutional Court of Ukraine (hereinafter referred to as the CCU), the court is not authorized to use the term "unconstitutional" in the decision within the judiciary, since unconstitutionality or constitutionality of the law is the result of the implementation of the CCU's constitutional function. However, the court's statement that the law contradicts the Basic Law of Ukraine is always related and intermediated by the criterion of law unconstitutionality. In this regard, the law's "unconstitutionality" is considered from the perspective of contradiction of a law or another normative legal act to the Constitution of Ukraine in the broad sense, and not only in the procedural aspect of the authorized body – the CCU.

The idea of distinguishing the criteria of non-legal and potentially non-legal laws is driven by the practical demand because when committing a procedural action, the court must be aware of the consequences of the law's application, the constitutionality of which causes doubts. Judicial practice teems with a diversity of approaches and is still not characterized by sustainability.

Analysis of research and publications. The stated problem has a theoretical dependence because the domestic doctrine now lacks monographic or other studies on the grounds and procedure for stipulating a legal or non-legal law by the courts when forming a decision on the application of the law or the Constitution of Ukraine during the case's consideration or review. At the same time, it is worth mentioning related research contributions, which became a helpful basis for developing this article, namely: a scientific article by M.I. Melnyk and S.V. Riznyk devoted to the limits of constitutional jurisdiction and the direct effect of norms of the Constitution of Ukraine in administering justice (Melnyk, Riznyk, 2016, p. 156), which is characterized by its applied and illustrative content. However, the mentioned article was published in 2016, during the force of the previous wording of the procedural codes which stipulated other procedural actions of the courts in case of doubts about the contradiction of the law to the Constitution of Ukraine (to suspend the proceedings and resort to the Supreme Court – hereinafter referred to as the SC). Currently, the new versions of the procedural codes enshrine the court's powers not to apply the law, which, in the court's opinion, contradicts the Constitution, and to apply the norms of the Constitution of Ukraine as norms of direct effect. Keeping with the above thesis, a monographic study by S.V. Riznyk (Riznyk, 2021, p. 316) deserves attention. Using various scientific methods, the scholar models a matrix for assessing the constitutionality of normative acts and draws his conclusions from the position of the CCU's constitutional competence, which regarding, first of all, judicial enforcement and judicial interpretation is still somewhat different. S.V. Riznyk mainly considers courts in the judiciary as subjects of intermediate constitutional control and deals with their procedural actions implicitly. However, the scientist does not mention the mechanisms of how the court should act when it should determine a specific legal basis for resolving the case and has doubts about what should be the basis – the rule of law or the Constitution of Ukraine. The courts' observance of a reasonable period during the consideration or review of the case is also pivotal.

An article by A.A. Yezerov ta D.S. Terletskyi "Courts of general jurisdiction and the Constitutional Court of Ukraine: interaction issues" is relevant as well. The authors rightly emphasize that "the application of the presumption of constitutionality is not limited to jurisdictional activities of the CCU and extends to activities of courts of general jurisdiction, which *must* assess the legal acts to be applied for compliance with the Constitution in administering justice. First of all, the courts should seek to interpret the acts in such a way as to bring them into line with the Constitution and refuse them and apply constitutional provisions as norms of direct effect in the case of evident contradiction, which cannot be in any way aligned with the Constitution" (Yezerov, Terletskyi, 2020, p. 233).

Other sources used in this article include individual publications by R. Aleksi, I.E. Berestova, V.K. Babaev, M.I. Baytin, O.V. Kmit, O.S. Kopytova and other (Berestova

et al., 2020; Kmita, 2016; Babaev, 1974; Baytin, 2001; Kopytova, 2019), who somehow focused on the variety of procedural actions to establish the compliance of a law with the Constitution of Ukraine during judicial application. Considering, relying on, and sometimes criticizing the standpoints of the mentioned scientists, we attempted to generalize, model, and single out an extensive list of criteria that indicate law legality or its different flaws.

The purpose of the article is to elucidate the grounds and procedure for distinguishing the criteria of the non-legal law affecting its application by courts when they commit procedural actions.

Research methods applied in the article are as follows: systems approach, generalization, dialectical, hermeneutical and predictive methods of scientific cognition. The author's conclusions are based on more than 200 court decisions (judgments, rulings, decisions) of courts of administrative, economic and civil jurisdictions, which directly or indirectly involve the provisions of the Constitution of Ukraine.

Previously unsettled issue. Solving the problem of establishing the criteria of the non-legal law during judicial enforcement has not become the subject of independent scientific developments and hence it requires urgent scientific elaboration with the formulation of practical recommendations for separating such criteria in the daily judicial enforcement activities.

2. Theoretical approaches to understanding the category of "non-legal law"

The study of the categories of "illegality" and "injustice" in grammatical terms should be conducted given the root form of the nouns of "legality" and "justice" (these categories are crucial for the further formation of the criteria of a non-legal or unconstitutional law). The definition of these categories should then take place through analyzing the interaction of the principles of justice and legitimacy and establishing priority in the non-application of an illegal or unjust law, because injustice and illegality are not identical categories, although they are related.

Thus, as for legality, the Ukrainian researcher O.V. Kmita cites the conceptual scheme available in the doctrine, which contains at least three points. Firstly, it is about the constitutional basis of legality and its provision: a) an individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value; b) human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State; c) everyone shall have the right to protect his rights and freedoms, rights and freedoms of others from violations and illegal encroachments, including from encroachments of officers and officials; d) constitutional rights and freedoms of citizens are not exhaustive; e) constitutional human and civil rights and freedoms shall not be restricted, unless a restriction is stipulated by the Constitution of Ukraine; f) human rights and freedoms are inalienable and inviolable. Secondly, legality should be covered from the perspective of the structure of the current legislation, which outlines the development of social and legal practice and comprises legal guarantees of compliance with the established legal order on pain of application (or by application) of state coercion measures in cases provided for by law. Third, legality is always associated with exercising legal practice in diversified forms based on the law (Kurochka, 2002, p. 29; Kmita, 2016, p. 27).

Justice is regarded as a general legal meta-principle or a fundamental principle of legal regulation, in particular, in the natural law type of legal understanding. Thus, from the standpoint of natural law, justice is the application of moral requirements as legal requirements for legislative acts, a concept of due process that corresponds to insight into human rights. Justice is understood far too often as the concept of proportionality of the chosen means to the desired goal (Oliinyk, 2019, p. 217).

Since law is a primary statutory tool for implementing the principle of justice, the legal law is characterized not so much by the legal properties of positive law as social and moral ones. Rule-of-law statehood relies on the fact that any normative legal acts should be the embodiment of justice (Lozynska, 2011, p. 38).

Justice as a legal category has specific criteria that can be found during the court's examination of a particular regulatory act:

1) equality – understanding of the same basic (we can say natural) rights, freedoms, and obligations of every individual and citizen, who cohabit in society. Equality also means the same opportunities to enjoy rights and realize one's interests without violating the same rights and freedoms of other individuals;

2) difference – an individual approach to solving each specific situation of uncertainty in the legal sense (when specific rights and/or interests of individuals are disputed);

3) the moral and ethical component of justice, which is considered in the legal dimension as the idea of humanism – the value of relationships between individuals, that is, respecting humanity limits in relationships. Humanity within law seeks to preserve humanity, which does not degrade honor and dignity, does not

aim to inflict pain and the attitude of individuals to each other when exercising their rights and interests;

4) consistency – a qualitative level of interaction between all public institutions towards ensuring the fair regulation of social relations, the capacity of a specific social mechanism (in this particular case, legal) to guarantee the implementation of the idea of justice precisely as a result of the interaction of all elements of the system, where none of the elements cannot achieve the above independently from each other (Skoromnyi, 2020, pp. 122–123).

Justice as a universal fundamental principle coordinates all other law principles, including mutually exclusive, of interaction with each other and other legal phenomena, in particular, with legal axioms (Kroitor, 2020, pp. 196–198). This is the integrative role of justice, which is essential in establishing the effectiveness of the law at the stage of its adoption and application by the court. For example, it is the court, determining a reasonable balance between private and public interests (proportionality) in dispositive litigation, is substantially related to the categories of legal balance and the common good, which is interpreted as an applied manifestation of justice in law.

Regarding the correlation of justice and legality, it is important to mention that the doctrine has three approaches with fundamentally different orientations:

1) the priority of the requirements of legality over justice (pronounced positivism, in particular, the rules of judicial enforcement in the USSR);

2) the principles of fairness and legality are conditionally equal (such an approach is mostly characteristic of current law enforcement by administrative courts);

3) the priority of justice over legality (characteristic of the natural-legal type of legal understanding and traced in civil law enforcement during the protection of constitutional rights of the highest level).

An unjust law raises questions about its non-legal nature. As a result, the court or judge, acting on behalf of the court, faces a dilemma when applying specific law rules: is he authorized to disqualify law rules if he considers them unfair, and therefore partially illegal?

The answer to this question is to examine the legal nature of the presumption of law and elucidate the concept of a non-legal law, which is partially developed by the theory and philosophy of law. We will provide a proper (mostly procedural) approach of Ukrainian scientists (Berestova et al., 2020, p. 173) to determining the presumption of the constitutionality of laws in countries with a separate body of constitutional control. They stress that the presumption of the constitutionality of a law is one of the important components of the presumption of the law. The authenticity of a legal act is traditionally interpreted as the act's accurate reflection of real conditions, relations that require legal influence and the adequate legal assessment of such assessments. The presumption of a legal act comprises the presumption of constitutionality, the presumption of legality and legitimacy of a normative legal act (a kind of synonymous categories), as well as the presumption of legality and integrity of the activities of participants in legal relations (Babaev, 1974, pp. 14, 114). All these elements are in an organic relationship with each other and are necessarily found in branch legislation. The presumption of constitutionality of a legal act (primarily a law) is indirectly derived from the constitutional provisions and is manifested in substantive and procedural legal aspects. The specificity of constitutional matter is that only a body of constitutional jurisdiction leads both the establishment and refutation of the presumption of the constitutionality of a law. It is the CCU that is authorized to state the unconstitutionality of an act, and the law is considered constitutional until it is enshrined in the decision of the CC. Therein lies the substantive component of the presumption of constitutionality of a normative act (Berestova et al., 2020, p. 174).

Indeed, this approach is based on the distribution of constitutional competence between jurisdictional bodies. However, if the court concludes, or the court or judicial bench (majority) has a firm belief that the applicable law contains unfair provisions and may be regarded as non-legal, the court, guaranteeing the rule of law in its judicial activities, should give a procedural reaction with the employment of some motives of a pecuniary nature at discretion. In other words, it means to take certain procedural actions regarding the application of the law. Therefore, without diminishing the above approach, we will present below our own generalized arguments on the criteria of the illegal law, which represents the elements of an unfair and illegal nature.

It is worth mentioning that the use of the term "non-legal law" within the doctrine is not supported by all legal scholars. Representatives of legal positivism (normativism) avoid the use of this term because, as M.I. Baytin said: "The provision on anti-legal legitimacy cannot be treated differently than nonsense, because what is legitimacy if it is anti-legal? The scientist argues that such "verbal manipulation" contradicts the thesis of the unity of law and order and negatively affects the training of future law-

yers, primarily law enforcement officers" (Baytin, 2001, pp. 310, 314–315).

However, positivism today is not the only type of legal understanding within the framework of judicial enforcement. Reflecting on the modern types of legal understanding, among the most common in judicial activity, incl. dispositive trials, we highlight: *sociological* – its supporters identified independent processes of lawmaking and law enforcement, while the activities of a law-enforcer within the limits established by law can be the condition for compliance and ensuring the regime of legality (Mozol, 2013, p. 39; Kopytova, 2019, p. 277), and *natural law*, which emphasizes law as a spiritual phenomenon, the ideals of justice, individual freedom, equality, social harmony, and other values without which law is impossible (Mozol, 2013, p. 38; Kopytova, 2019, p. 71).

Judicial interpretation as a stage of judicial enforcement, within which the court defines the legal qualification of relations, is in organic connection with the types of legal understanding, which in turn are the theoretical basis of the judges' reasoning. Sociological and natural law types of understanding are used by the category of "non-legal law". Thus, when establishing the legal basis of the case, the court checks the specific norm for its compliance with the provisions of the Constitution of Ukraine, which is its obligation in the mechanism of ensuring the rule of law. This process takes place through ascertaining the presence or absence of signs of justice, and legality of a legal act. In particular, the German lawyer R. Alexi attributes the following to non-legal laws: 1) an extremely unfair law; 2) a law that cannot be implemented; 3) an unconstitutional law (Sieckmann, 2021, pp. 722, 739). This approach inherits some provisions of jus naturalism, "sociologism" and normativism.

Therefore, the doctrine contains many approaches to the formation of the concept of a "non-legal law": *from the absolute nullity* of the law to the determination of the injustice of its individual provisions for the subject of private relations, but the possibility *of applying the law within the framework of ensuring the common good* (public interest – *A. R.*).

The absolute nullity of laws as non-legal, i. e., the imposition of the rule on the inapplicability of the law or its individual norms from the outset, belongs to the exclusive constitutional functions of the CCU as per procedure for consideration of cases. At the same time, a statement (conclusion) in the court decision on the contradiction of the law to the Constitution of Ukraine actually molds the law into a disputed one. Consequently, it is not applied only if the party to the dispute justifies the relevant fact and the judge takes into account the position of the party, since its arguments and motives of the court (based on the internal conviction of the court) coincide; or the court independently reaches the above conclusion.

In our opinion, the above is a key difference between functions of the CCU and the courts within the judicial system in the mechanism of full or partial disqualification of legal norms during the consideration of cases by the latter.

3. Classification of criteria of a non-legal and potentially non-legal law

The resort to theoretical, philosophical, constitutional, and branch contributions, the practice of courts of administrative, economic and civil jurisdictions, relevant decisions of the CCU, and the materials of constitutional proceedings makes it possible to single out such criteria of a *non-legal* and *potentially non-legal law* from the perspective of the court as the final law enforcement agent of a legal conflict (dispute).

1. Classification of the manifestation of the criterion of *obvious contradiction* to the Constitution of Ukraine, which characterizes the law as non-legal:

a) *defects in content*: prescriptions of laws that are obviously unfair per se;

b) *defects in the hierarchy*: provisions of by-laws that evidently contradict the content of acts of higher force;

c) *defects of the subject*: norms of a subordinate legal act issued by the subject exceeding its powers;

d) *defects of temporal significance*: provisions of laws that are objectively obsolete and come into conflict with the prescriptions of acts adopted later (in this case, chronological collisions are resolved, usually without recourse to the norms of the Constitution of Ukraine, or through indirect subsidiary application of the norms of the Constitution of Ukraine);

e) *defects of targeting*: a law adopted not for the common good; practical application creates potential corruption risks and, as a result of its application, human rights may be restricted;

f) *implementation defects:* extremely ineffective law in law enforcement due "stillbirth", zero applicability since the norm's adoption.

2. Criteria of potentially non-legal laws – the *presence of elements of unfair provisions, but their contradiction to* the Constitution of Ukraine is not obvious:

a) *content flaws are not obvious*: justification of injustice and illegality of the law norm by participants to procedural relations and/or the availability of decisions of lower-level courts having diametrically opposite motivation with the application of the norms of the Constitution

of Ukraine and the norms of the laws in one case;

b) *defects in content due to the change in legislative regulation*: sharp social rejection due to the change in the vector of legislative regulation, massive appeals with a petition not to apply such a law as unfair;

c) *defects in the form*: the by-law establishes norms that are subject to regulation exclusively by the laws of Ukraine (Art. 92 of the Constitution of Ukraine);

d) *defects* of the *subject of regulation*: the possibility of applying multiple norms with identical content of the same focus and regulation of the same sphere of social relations.

The peculiarity of potentially non-legal laws is that the current normative legal act, which contains some unjust provisions, is repeatedly applied in the administration of justice and thus, the legal norm with various defects is repeatedly reproduced in court decisions. If the CCU will recognize such an act as unconstitutional, one can further talk about a general weakening of the regulatory framework of the system of justice as a whole that does not contribute to the development of Ukraine as a country with a stable democracy, which our state is so eager to achieve.

The above criteria of a non-legal and potentially non-legal law can be a proper basis for elucidating the procedural actions of the court regarding the application of the law or another normative legal act that contains signs of a non-legal law and checking it for compliance with the Constitution of Ukraine.

In terms of applicability or inapplicability of the norms of the Basic Law of Ukraine in the court decision, we distinguish procedural actions which can be conditionally divided into two interconnected groups, the scope of which involves:

1) actions to establish the fact of contradiction of the law or another normative legal act to the Constitution of Ukraine through covering obligation of the court to check the norm of the law and another normative legal act for its compliance with the Constitution of Ukraine during judicial enforcement;

2) actions to resolve the issue of application by the courts of a formal legal act that has not recognized as unconstitutional but contains unjust provisions (through the prism of assessing the degree of injustice of the provisions of the law in the opinion of the party or the conviction of the court).

The former group includes:

1) settlement of the petitions of the parties on the application of the norms of the Constitution of Ukraine;

2) settlement of the issue of appealing to the SC to resolve the issue of requesting the CCU for the constitutionality of a law or other legal act, the decision on the constitutionality of which falls within the jurisdiction of the CCU;

3) application of the norms of the Constitution of Ukraine as the legislation according to which the court resolves cases on the merits.

We emphasize that the second paragraph is regarded as independent since, unfortunately, judicial practice indicates that the relevant obligation is often used by the courts as a power. However, after the application of the norms of the Constitution of Ukraine as norms of direct action, they do not appeal to the SC in under para. 2, part 4 of Art. 7 of the CAP of Ukraine, para. 2, part 6 of Art. 11 of the CPC of Ukraine, para. 2, part 6 of Art. 10 of the CPC of Ukraine.

The latter group includes the resolution of cases on the merits and the formation of legal opinions of the SC, when the courts reach conclusions:

1) on the presence of unjust provisions in the content of legislative norms, but within the protection of the public interest which they support– application of the rules of such a law;

2) when the courts unambiguously indicate that the application of the norms of the Constitution of Ukraine based on part 4 of Art. 7 of the CAP of Ukraine, part 6 of Art. 11 of the CPC Code of Ukraine, part 6 of Art. 10 of the CPC of Ukraine belongs to the powers of the CCU, and the applicable law is not unconstitutional and has not been recognized as such, and therefore is subject to application.

4. Conclusions

The absolute nullity of laws as non-legal, that is, the establishment of the rule on the inapplicability of the law as a whole or its individual norms from the very beginning, belongs to the exclusive constitutional functions of the CCU under the procedure for consideration of cases. Instead, the statement (conclusion) in the court decision on the contradiction of the law with the Constitution of Ukraine turns the law into a disputed one, and therefore it is not applied only if such is justified by the party to the dispute and the judge takes into account the position of the party as its arguments and motives of the court (based on the internal conviction of the court) coincide; or the court independently reaches the above conclusion. This is the key difference between the functions of the CCU and the courts in the judicial system in the mechanism of full or partial disqualification of legal norms during the consideration of cases by the latter.

Criteria of obvious contradiction to the Constitution of Ukraine, which characterizes the law as non-legal are as follows:

a) defects of content; b) defects of the hierarchy; c) defects of the subject; d) defects of temporal significance; e) defects of targeting; f) defects of implementation.

The criteria of potentially non-legal laws are the presence of elements of unfair provisions, but their contradiction with the Constitution of Ukraine is not obvious: 1) content defects are not obvious; 2) content defects are regarded through the change of legislative regulation; 3) form defects.

In terms of applicability or inapplicability of the norms of the Basic Law of Ukraine in the court decision, we distinguish procedural actions which can be conditionally divided into two interconnected groups, which covers: 1) actions to establish the fact of contradiction of the law or another normative legal act to the Constitution of Ukraine through covering obligation of the court to check the norm of the law and another normative legal act for its compliance with the Constitution of Ukraine during judicial enforcement; 2) actions to resolve the issue of application by the courts of a formal legal act that has not recognized as unconstitutional but contains unjust provisions (through the prism of assessing the degree of injustice of the provisions of the law in the opinion of the party or the conviction of the court).

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ВИОКРЕМЛЕННЯ КРИТЕРІЇВ НЕПРАВОВОГО ЗАКОНУ, ЩО ВПЛИВАЮТЬ НА ЙОГО ЗАСТОСОВНІСТЬ СУДОМ

Анотація. ***Метою статті*** є розкриття особливостей виокремлення критеріїв неправового закону, що впливають на його застосовність під час розгляду чи перегляду справи судом.

Наукові методи. У роботі використані системний, діалектичний, герменевтичний та прогностичний методи наукового пізнання, а також метод узагальнення.

Результати. Доктрина містить чимало підходів до формування концепції «неправового закону»: від абсолютної нікчемності закону до встановлення несправедливості його окремих положень для суб'єкта приватних відносин, проте можливості при цьому застосування закону в межах забезпечення загального блага (публічного інтересу). Абсолютна нікчемність законів як неправових, тобто встановлення правила про незастосовність закону загалом або окремих його норм із самого початку, належить до конституційних функцій виключно Конституційного Суду України відповідно до процедури розгляду справ. Натомість твердження (висновок) суду в судовому рішенні про суперечність закону Конституції України фактично перетворює закон на оспорюваний, а відтак він не застосовується тільки в разі, якщо таке обґрунтовує сторона спору та суддя враховує позицію сторони, оскільки її аргументи й мотиви суду (що ґрунтуються на внутрішньому переконанні суду) співпадають, або в разі, якщо суд самостійно доходить заявленого вище висновку.

Висновки. Виокремлені критерії очевидної суперечності Конституції України, що характеризує закон як неправовий, зокрема: а) вади змісту; б) вади ієрархії; в) вади суб'єкта; г) вади темпорального значення; ґ) вади спрямування; д) вади реалізації. Також встановлено коло критеріїв потенційно неправових законів – наявність елементів несправедливих положень, проте суперечність Конституції України яких не очевидна: 1) вади змісту є неочевидними; 2) вади змісту через зміну законодавчого регулювання; 3) вади форми. Обґрунтовується, що під кутом застосовності чи незастосовності в рішенні судом норм Основного Закону України виділяються процесуальні дії, які умовно можна поділити на дві групи, пов'язані між собою, які охоплюють своєю сферою: а) дії зі встановлення факту суперечності закону або іншого нормативно-правового акта Конституції України через розкриття обов'язку суду перевірити норму закону та іншого нормативно-правового акта на предмет її відповідності Конституції України під час судового правозастосування; б) дії щодо вирішення питання застосування судами формально чинного нормативно-правового акта, який не визнано неконституційним, проте він містить несправедливі положення (крізь призму оцінки глибини несправедливості положень закону на думку сторони чи переконання суду).

Ключові слова: Конституція України, суд, правовий закон, очевидна суперечність закону Конституції України, потенційно неправовий закон, несправедливі положення закону, процесуальні дії.

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