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Some Aspects of Declaring Legal Acts Unconstitutional

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Abstract

The relevance of the study is conditioned by a number of problems of declaring legal acts unconstitutional and the specifics of the consequences of such decisions to guarantee the rights of the individual. This requires a review of approaches to the temporal effect of the relevant decisions of the Constitutional Court, to guarantee the right to review court decisions adopted based on an act that has been declared unconstitutional. At the same time, it is necessary to put forward new proposals for legal regulation of the analysed area, optimal for the rule of law and ensuring the right to a fair trial. The purpose of the study is to clarify certain features and consequences of declaring legal acts unconstitutional to further ensure the rights of citizens and make proposals for amendments to the legislation. The methodological basis of the study is the dialectical and materialist method, general and special methods of legal science, in particular, system and structural, comparative law, logical and legal (dogmatic). The scientific originality lies in a comprehensive clarification of the features of the legal consequences of declaring legal acts unconstitutional and making proposals for regulatory settlement of identified problems in the conditions of Ukrainian law enforcement. According to the findings, the importance of guaranteeing the normative and practical connection between the content of the act and its impact on the damage to anyone, the proportionality of ways to compensate, and the range of legal relations in which such damage can be compensated

Keywords:

constitutionality; unconstitutionality; unconformity with the Constitution; legal certainty; rule of law; restoration of rights

Introduction

The Strategy for the Development of the Justice and Constitutional Judiciary for 2021-2023 defines that independent and impartial justice is the key to sustainable development of society and the state, guarantee of human and civil rights and freedoms, rights and legitimate interests of legal entities, state interests, welfare and quality life, creating an attractive investment climate, timely, effective and fair resolution of legal disputes on the basis of the rule of law. At the same time, the improvement of the justice system would contribute to the establishment of law and order based on a high level of legal culture, the activities of all actors in public relations based on the rule of law and protection of human rights and freedoms[1]. The implementation of most of the declared provisions

[1]Decree of the President of Ukraine No. 231/2021 "On the Strategy for the Development of the Justice System and Constitutional Courts for 2021-2023". (2021, June). Retrieved from https://www.president.gov.ua/documents/2312021-39137.

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is impossible without rethinking the approaches to the ratio of certain norms of substantive and procedural law applied by the courts and the Constitution of Ukraine.

The purpose of the study is to clarify certain features and consequences of declaring legal acts unconstitutional to further ensure the rights of citizens, and to make proposals for changes in legislation. To achieve this goal the following tasks are identified: recognition of legal acts unconstitutional; to establish the types of consequences that may occur as a result of declaring legal acts unconstitutional; identify ways to protect violated rights of citizens.

Materials and Methods

The methodological basis of the study is the dialectical and materialist method of scientific knowledge, general and special methods of legal science, in particular, system and structural, comparative law, logical and legal (dogmatic). In addition, empirical (observation, description) and theoretical (analysis, deduction) methods were used. Such methods were applied at all stages of the study, including: identification of the scientific problem, setting goals and objectives of the study; specifying the content of the provisions concerning the mechanism and consequences of declaring legal acts unconstitutional, and making proposals to eliminate identified problems in this area.

The theoretical basis of the study are the results of studies by Ukrainian (I. Borodin [1], M. Bilak [2], H. Bukanov [3], O. Spinchevska [4], O. Kovalchuk [5], O. Shylo [6] et al.) and foreign (V. Grabowska-Moroz [7], R. Williams and A. Chergosky [8], M. Hazelton, R. Hinkle, and J. Spriggs [9] et al.) researchers and practitioners, whose area of professional interest is the issues addressed in this paper. The empirical basis of the study is the data obtained from a survey of judges and lawyers, and representatives of the legislative and executive branches of government on the implementation of human and civil rights in the context of declaring legal acts unconstitutional.

Along with the above, the subject of analysis in the course of the study were the current regulations, as national, foreign and international sources of law, which influence the establishment of current approaches to law enforcement.

Results and Discussion

Regulatory aspects

Article 8 of the Constitution of Ukraine establishes the direct effect of its norms and guarantees access to court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Basic Law. At the same time, this provision is aimed at ensuring the full implementation of Article 3 of the Constitution of Ukraine, according to which a person, their life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to the people for its activities. The establishment and protection of human rights and freedoms is the main duty of the state[1]. In pursuance of these norms, the Basic Law provides for Article 56, which establishes the possibility of compensation at the expense of the state or local governments for material and moral damage caused by illegal decisions, actions or inaction of public authorities, local governments, their officials and powers[2].

On the one hand, given the direct nature of constitutional norms, this provision (and, apparently, this is the ideology established by the legislator), should be an effective means of implementing and ensuring full compliance with the full range of constitutional and other rights of citizens. However, today the law enforcement practice shows a somewhat opposite situation, in which in the vast majority of cases, the complex procedure of proving and lack of special effective, transparent and clear procedures, and a special system of compensation for unconstitutionality of legal acts is a significant barrier to de facto and real guarantee of the constitutional rights of citizens. As a rule, the doctrinal vision of this concept is mainly reduced to its disclosure through the prism of providing subjective interest. For example, I. Borodin reveals the essence of administrative and legal regulation of the implementation of the constitutional right to appeal, as the satisfaction of subjective interests through personal actions and actions of state institutions and their officials [1, p. 9].

Both constitutional and civil science are of the opinion that the value of the constitutional right to appeal as subjective lies in the fact that it provides every citizen with the use of the social good and allows them to satisfy the relevant interests. At the same time, the content of the constitutional right of citizens to appeal as an administrative and legal way to protect the rights and freedoms of man and citizen includes social and legal elements. Its social content is characterised by the fact that it expresses the degree of possible behaviour of the citizen to satisfy their subjective interests, and hence social interests) [1, p. 16]. Thus, it can be stated that these features and benefits for the citizen will be fully disclosed at the level of state decision on compensation for damage caused by legal acts declared unconstitutional, in the case of creating appropriate organisational and legal conditions for the exercise of relevant rights.

According to Art. 7 of the Law "On the Constitutional Court of Ukraine"[3], the powers of the Constitutional Court include, inter alia, resolving issues of compliance with the Constitution of Ukraine (constitutionality) of laws of Ukraine and other legal acts of the

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]*Ibidem*, 1996.
[3]Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.

Verkhovna Rada of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea; resolving issues of compliance of the Constitution of Ukraine and laws of Ukraine with legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea at the request of the President of Ukraine in accordance with part two of Article 137 of the Constitution of Ukraine, and resolving issues of constitutionality considers that the law of Ukraine applied in the final court decision in her case contradicts the Constitution of Ukraine. At the same time, Art. 97 of the same law determines the procedure for execution of decisions and conclusions of the Court. Thus, the Court in the decision, the conclusion can establish the order and terms of their execution, and also to oblige the corresponding state bodies to provide control over execution of the decision, observance of the conclusion. At the same time, the Court may require the relevant authorities to confirm the execution of the decision in writing and to comply with the opinion. In order to ensure compliance with these provisions, Art. 98 established that non-compliance with the decisions and non-compliance with the conclusions of the Court is liable under the law[1].

Meanwhile, as was noted earlier, modern provisions on the implementation of the decisions of the Constitutional Court of Ukraine do not create tools for the real restoration of violated rights and interests, including the review of administrative applications submitted by administrative courts grounds for unconstitutionality (constitutionality) of a law, other legal act or their separate provision established by the Constitutional Court of Ukraine, applied (not applied) by the court in resolving the case.

Thus, the relevant acts of the Constitutional Court of Ukraine do not have reverse temporal effect, which neutralises the very existence of the institution of declaring legal acts unconstitutional in the context of protecting the rights of a particular citizen in specific circumstances. Instead, according to a recognised doctrinal position, the jurisdictional activity of the Constitutional Court of Ukraine, which is an important institutional component of the human rights mechanism, may have very specific legally significant consequences to ensure the restoration of violated rights and freedoms of an individual.

Law enforcement and doctrinal aspects

The unconstitutionality of the law applied by the court to decide the case, established by the Constitutional Court of Ukraine, indicates that this or that court decision was made in conditions of contradiction of the Constitution of Ukraine. Regulatory support of the administrative process of Ukraine at the level of paragraph 1 part 5 of Art. 361 CAS determines one of the grounds for review established by the Constitutional Court of Ukraine unconstitutionality (constitutionality) of the law, other legal act or their separate provision, applied (not applied) by the court in deciding the case, if the court decision is not yet executed[2]. However, from a law enforcement standpoint, the process of such a review is quite complex.

The Constitutional Court of Ukraine in its Decision of December 2, 2019 No. 11-r/2019[3] expressed the legal position: "with such decisions (acts) does not allow any public authority to question their content" (paragraphs 2, 4 of subparagraph 2.2 of paragraph 2 of the motivating part). At the same time, for example, the Supreme Court in its judgment in case No. 808/2492/18 of 17 December 2019 pointed out that in view of the provisions of paragraph 1 of part five of Article 361 of the CAS, a decision that has entered into force cannot be considered unenforced, which denied the claim, because it does not provide for enforcement[4]. Thus, such an approach to the interpretation of the rule of law essentially undermines constitutional and procedural guarantees, as a person is deprived of the right to review a decision on the grounds of declaring unconstitutional the law applied in the case.

Thus, it can be concluded that this approach not only undermines the right of access to justice, but also generally undermines the importance and jeopardises the exercise of the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As scholars and practitioners rightly note, analysing the relevant issues, it will apply in the course of application to the plaintiff, who defends own right in all courts, starting with the first and ending with the Constitutional Court of Ukraine, according to which the unconstitutionality of the provisions of the law, due to which the rights of the person were violated, was established. Nevertheless, according to the Supreme Court, such a person will not have the right to review in exceptional circumstances, and therefore, the need to maintain the current legal regulation of the analysed institution is questionable, given the conditions of its rather limited application to account the need to remove any regulatory obstacles.

The following conclusions are confirmed by the content of the Supreme Court ruling in case No. 804/3790/17 of 25 July 2019[5], according to which

[1]Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.
[2]Code of administrative judiciary of Ukraine No. 2747-IV. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[3]Decision of the Constitutional Court of Ukraine No. 11-p/2019 on the Right for the Constitutional Taxes of 49 People's Deputies of Ukraine Regarding the Official Clouding of the Provisions of Article 151-2 of the Constitution of Ukraine. (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/v011p710-19#Text.
[4]Resolution of the Supreme Court at the Right No. 808/2492/18. (2019, December). Retrieved from https://reyestr.court.gov.ua/Review/86387767.
[5]Resolution of the Supreme Court at the right No. 804/3790/17. (2019, July). Retrieved from https://reyestr.court.gov.ua/Review.

disputed legal relations cannot be affected by a decision of the Constitutional Court of Ukraine, given their occurrence before the Constitutional Court given the fact that the decision would extend the provisions that would extend its effect to legal relations that arose before its entry into force. From the above it can be seen that in general, the Supreme Court denies the possibility of exercising the right to review court decisions in exceptional circumstances, including, in view of the fact that such review violates the principle of legal certainty and the rule declared unconstitutional was in force at the moment of occurrence of the disputed legal relationship.

Thus, to neutralise such an ill-considered approach, it is advisable to directly regulate the possibility of such a review with its extension to all cases without exception. In other words, it is the current approach that not only contradicts the principle of legal certainty, but also calls into question the generally accepted legal nature of declaring a law unconstitutional. This is explained, among other things, by the fact that the fact of declaring a law or a separate norm of it unconstitutional will make their further application impossible. However, during the period of validity of the relevant provisions such norms have already violated the rights of a significant number of persons, and therefore, given that the state in one way or another allowed the adoption and long-term unconstitutional act and it should be responsible for it would be logical to ensure the creation of conditions for fair satisfaction for the violation of the rights of the persons concerned. Such an approach, in the context of guaranteeing the rule of law and the Basic Law, would be quite logical and balanced.

According to M. Smokovych, the legislator did not establish, and the doctrine of law did not offer a universal approach in terms of determining the limits of restoration of violated rights, freedoms and interests of the individual and their scope. The expert focuses on the main legal positions on this issue: 1) the first legal position: the establishment by the Constitutional Court of Ukraine of the unconstitutionality of the law as a whole or its separate provision applied by the court in resolving a case gives only the right to review such a court decision in exceptional circumstances. 2) the second legal position: the decision of the body of constitutional jurisdiction obliges in connection with exceptional circumstances to make a court decision in favour of the person applying for review of the court decision in exceptional circumstances, while the restoration of violated human rights must be determined from the date of the Constitutional Court of Ukraine, i.e., it is exclusively about the prospective effect of the decision of the body of constitutional jurisdiction. 3) the third legal position: the restoration of violated human rights due to exceptional circumstances should be determined not from the date of the relevant decision of the Constitutional Court of Ukraine, but earlier, in particular from the date of legal violation of constitutional rights, freedoms and interests of the person. An act later recognised as inconsistent with the Constitution of Ukraine (unconstitutional) [10, p. 12-13].

In turn, the above confirms the above conclusions on the need and rationality of establishing the possibility of extending the relevant decision of the Constitutional Court of Ukraine in retrospect. However, the study partially agrees with M. Smokovych, who emphasises the need to differentiate the spheres of legal relations to which the possibility of such retrospective action will apply. Thus, M. Smokovych notes that the rights arising from the results of the revision of a decision on unconstitutionality cannot be absolute, in particular, in terms of retrospectiveness of such a decision. For example, it is proposed that the legislator establish some filters based on the criteria of specific individual rights (natural rights, social rights, etc.) [10, p. 14-15].

At the same time, in the context of determining the range of rights to which such a retrospective action may apply, it is necessary to proceed from giving the widest possible range of persons the right to appeal. This position is related to the need to implement in law enforcement practice the declared constitutional rights of the person, which were analysed above. L. Brocker's view that the decisions of the Constitutional Court are subject to unconditional execution and observance also supports this conclusion. This is especially true in cases where laws are found to be unconstitutional. Insignificance means "general invalidity of a legal norm" from the very beginning (ex tunc). Therefore, as a rule, the law is unconstitutional from the moment of its promulgation. But the Federal Constitutional Court is also empowered to determine the nullity of a law with its effect on the future (pro futuro) or from the moment it is declared null and void (ex nunc). This is mainly done so that an ex tunc decision does not create an "even worse unconstitutional situation" or if other persons may be deprived of the necessary protection of their legal position (for example in the field of social services). Under this approach, the legislator also gets the opportunity to independently and in compliance with the provisions of the relevant decision of the Federal Constitutional Court to correct violations of the constitution by adopting a new law. That is, if the recognition of the nullity of the law is pro futuro or ex nunc, the relevant decision of the FCC will not conflict with the decisions of professional courts that have used the relevant law and have already entered into force [11, p. 22].

The execution of decisions of the constitutional court must be guaranteed. Thanks to them, the constitutional position is established (restored) and the real effect of the fundamental rights of citizens is ensured. In view of the above, the annulment of decisions of administrative courts that have entered into force contributes to the establishment of material justice. According to L. Brocker, the legislator should take into account that the subsequent repeal of decisions of administrative courts, which have already entered into force, will gradually form a kind of "legal ordinary case", which can significantly

damage the credibility of administrative proceedings [11, p. 25]. According to E. Wendler, in Austria the Court also decides on the unconstitutionality of legal provisions on the application of an individual who claims that his rights were directly violated if the law came into force for this person in the absence of a court decision or administrative decision (individual application). In addition, since January 1, 2015, any person who claims that their rights as a party to a case decided (by a civil or criminal court of first instance) has been violated has the right to challenge the constitutionality of the law in judicial protection of this decision by court [12].

It is also difficult to agree with the reservations of M. Bilak, who concludes that a change in law enforcement interpretation does not justify the annulment of a court decision or standard decisions in such matters. Otherwise, the review of previous decisions by administrative courts may be massive and destabilise the existing justice system, weakening its legitimacy in the eyes of society [2, p. 74]. However, considering the derivative nature of declaring an act unconstitutional, the primary consideration of which is its adoption initially contrary to constitutional norms, should be given sufficient attention to increasing the authority of the state as a whole and, in particular, the judiciary not by artificially operating the "permissible" number of constitutionally reviewed or reviewed judgments. Moreover, it is the timeliness of the state's recognition of previously made mistakes in the form of the adoption of unconstitutional norms in circulation, and the revision of relevant court decisions that will help strengthen the authority of the judiciary and trust in the state. A similar caveat applies to M. Bilak's position on the possibility of appealing final decisions, without being based on indisputable grounds of public interest, signs of incompatibility with the principle of legal certainty [2, p. 74].

However, given the above provisions, depriving a person of the opportunity to appeal a court decision on the basis of recognising the unconstitutionality of a legislative act, in contrast to guaranteeing such an appeal, is a violation of the principle of legal certainty. Moreover, according to the conclusions of the Venice Commission, legal certainty is not in itself formalised, but may have some flexibility. The study suggests that it is in the cases analysed above that such flexibility should be manifested to the highest degree, including the laws that, in accordance with constitutional requirements, may have retroactive effect if the situation improves. In the same context, I. Venediktova's vision of the category of public interest, which is revealed on two levels: as a common generalised interest of a certain social community, as public interests, without which it is impossible to ensure the integrity and stability of state and society, including the implementation of certain private interests that were supported by the state [13, p. 88-89].

Analysis of the legal literature and legislation of foreign countries allows identifying the most common types of legal consequences of the application of decisions of constitutional courts on the unconstitutionality of regulations. First, it is about ex nunc. Under this approach, the act is declared unconstitutional from the moment the decision of the constitutional court is announced and acts in advance. Secondly, pro futuro – is a form in which the constitutional court postpones the entry into force for the future. And finally, thirdly ex tunc – since the adoption of the act, which is associated with the so-called retroactivity (note that this method is considered the least common to the most controversial, which is not in every case can be called rational, given that it is perhaps most aimed at restoring individual rights).

Interestingly, the first two approaches are the most common, which probably explains the exceptional commitment of some Ukrainian scholars and practitioners. However, such an algorithm is not unconditional, and therefore, the legislation of many countries does not contain provisions that would imperatively establish the course of action of the court in appropriate cases. Instead, in most cases, the law determines the right of the court to independently determine the mode of action in time. Ukraine is no exception, as Article 152 of the Basic Law establishes the power of the Court to directly determine the period of invalidity.

One of the problems, as stated above, arises in the context of ensuring the right of a person to a fair trial in the case of the need to consider the review of a court decision made on the basis of unconstitutional law. First of all, there is a lack of a clear and consistent vision of the state to establish certain procedures and criteria according to which citizens can expect to expect the restoration of violated rights, and the courts – to strictly adhere to the established procedure. In such circumstances, today, unfortunately, it is premature to say that the institution of review of court decisions is now fully operational.

In this context, V. Shapoval [14, p. 78] and H. Bukanov [3, p. 105] emphasise that the practice of constitutional justice bodies of foreign countries allows tracing a much higher level of activity of citizens in the context of their use of constitutional justice instruments to protect human and civil rights and freedoms. Moreover, in Spain, for example, compared to legal entities that appeal to the Constitutional Court in about two percent of cases, the rest of the appeals are from individuals. This indicates, among other things, the extremely low level of realisation of the potential of constitutional justice in Ukraine. In view of this, further practical implementation of institutional and functional capacity would be facilitated by a well-defined mechanism, the application of which would allow an approach from formal, normative protection of rights "on paper" in favour of ensuring comprehensive state responsibility for unconstitutional steps.

According to A. Vozniuk, the improper substantiation of the court decision causes a violation of the principle of presumption of constitutionality of the law [15, p. 23]. In the same context, O. Spinchevska notes that the legal

position of the Constitutional Court of Ukraine can be considered as a specific source of law, along with the Constitution of Ukraine [4, p. 62]. Together, both provisions allow stating the exceptional nature of the significance of the actions of the body of constitutional jurisdiction in the establishment of high-quality, meaningful, and practically capable legal field of the state.

That is why it is seen that the decisions of the Constitutional Court can be considered safeguards through which the state realises its own potential in the face of minimal regulatory threats. However, in compliance with the provisions of international treaties, in this way the state takes measures to guarantee human rights [5, p. 33]. Finally, the decision of the Court, which establishes the unconstitutionality of certain laws, serves to form a permanent and unified law enforcement practice based on the principle of legal certainty and ensures the transition of both courts and the state as a whole from quantitative to qualitative indicators [6, p. 138].

The results of the analysed researches of foreign experts deserve special attention. Thus, it can be seen that in foreign doctrine and practice there is a lot of the greatest relationship between the nature of new legal relations, which focuses on a particular area, and the work and conclusions of higher courts – Supreme and Constitutional, which creates new approaches to law enforcement [9]. At the same time, scholars point out that procedural mechanisms for overcoming differences in previously established legal approaches allow the creation of new case law [8].

The study suggests that it is fair to extend the relevant provision to the organic influence of constitutional proceedings on overcoming certain differences in law enforcement, to form optimal normative conditions for compliance with the requirements of the Constitution of Ukraine. Thus, it is quite objective the need to establish on the basis of the case law of the Constitutional Court sound rule-making and law enforcement practices. In addition, international experts are of the opinion that the highest branches of the judiciary, within their powers, should ensure the enforcement of laws [16]. Thus, while the general rule in the Ukrainian judicial system in this context is to eliminate errors of law by the court of cassation, in terms of constitutional proceedings, it may instead be to identify and eliminate global regulatory and law enforcement issues in terms of constitutional rights of human and citizen.

In this case, it is possible to model the level of influence of the constitutional judiciary not only on the justice system and the establishment of good practice of rule-making, but also on the behaviour of state bodies and their officials. Thus, it will be possible to trace such influence by analogy with the approach of foreign experts to establish the motives for judicial decisions by lower courts in the practice of the Supreme Court [17]. This is confirmed by the position of Spanish lawyers, who note the importance of reasonable criteria for evaluating court decisions and law enforcement in general [18].

In addition to the above, it is rational for the national practice of constitutional justice and rule-making to take into account in each case not only the facts but also the risks and conditions of interference with human rights for various reasons [19]. Ultimately, the interpretation of the Constitution must take into account the inadmissibility of politicising the Basic Law [7] and, despite the dynamism of law enforcement and the needs of society, the need for the most stable state of constitutional norms, proper interpretation of which can be one way to guarantee human and civil rights.

Conclusions

In the context of the above, there is an inevitable need for rule-making doctrine and practice to: a) clarify the relationship between the content of the act and its direct impact on harm to a particular person or group of persons; b) estimate the amount of damage caused and finding out the ways proportional to the violation of compensation for damage; c) establishm a range of legal relations, the occurrence of violations in which may entail compensation due to the unconstitutionality of the legal act.

Due to the lack of clarity and unambiguity of the state position in this area, the potential of constitutional justice in Ukraine is currently underused. It seems that among the basic priorities of the state and, consequently, the legislator, first of all – ensuring a clear standardisation of ways to restore the rights of citizens violated by unconstitutional legal acts, and establishment of a transparent, clear, and effective algorithm for implementing appropriate mechanisms. It is expected that this will contribute, inter alia, to bringing the national legal system closer to the best world standards of guaranteeing the rule of law and, consequently, the primacy of human and civil rights.

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Окремі аспекти визнання правових актів неконституційними

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Анотація
Актуальність дослідження зумовлена наявністю низки проблем щодо визнання правових актів неконституційними, а також специфікою наслідків ухвалення таких рішень для гарантування прав особи. Наведене потребує перегляду підходів до темпоральної дії відповідних рішень Конституційного Суду, а також до гарантування права на перегляд судових рішень, ухвалених на підставі акта, який визнано неконституційним. Водночас необхідним є висунення нових пропозицій щодо правового регулювання аналізованої сфери, оптимального для дотримання принципу верховенства права й забезпечення права на справедливий суд. Мета дослідження полягає в тому, щоб з'ясувати окремі особливості й наслідки визнання правових актів неконституційними для подальшого забезпечення прав громадян, а також обґрунтувати пропозиції щодо внесення відповідних змін до законодавства. Методологічною основою дослідження є діалектико-матеріалістичний метод наукового пізнання соціально-правових явищ, а також загальнонаукові та спеціальні методи юридичної науки, зокрема системно-структурний, порівняльно-правовий, логіко-юридичний (догматичний). Наукова новизна здійсненого дослідження полягає в комплексному з'ясуванні особливостей правових наслідків визнання правових актів неконституційними, а також формулюванні пропозицій щодо нормативного врегулювання виявлених проблем в умовах українського правозастосування. За результатами дослідження з'ясовано важливість гарантування нормативного та практичного зв'язку між змістом акта і його впливом на завдавання будь-кому шкоди, пропорційністю способів її відшкодування, а також кола правовідносин, у частині яких цю шкоду може бути відшкодовано

Ключові слова:
конституційність; неконституційність; невідповідність Конституції; правова визначеність; верховенство права; поновлення прав