DECISION OF THE CONSTITUTIONAL COURT OF UKRAINE AS INTERPRETATION LEGAL ACTS

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"When the law is to be applied by a certain legal authority,
he must find out the meaning of the norms that he has to apply –
he must interpret these norms."
Hans Kelsen

Annotation. The article examines the legal nature of decisions of the Constitutional Court of Ukraine as interpretative legal acts. It is noted that constitutional law-making is a special form (variety) of law-making, which has a multi-level and multi-aspect nature, which is determined by its special nature, essence and functional purpose. Constitutional law-making is a special activity of competent law-making subjects, which is carried out in a special procedural order and is aimed at adopting, changing and canceling the norms of the Basic Law of the state and constitutional acts of law-making. The specificity of the activity of the Constitutional Court of Ukraine is that it does not administer justice in the direct sense. Its powers include: resolving issues of compliance with the Constitution of Ukraine (constitutionality), laws of Ukraine and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea; official interpretation of the Constitution of Ukraine; resolution of questions about the conformity of the Constitution of Ukraine (constitutionality) of the laws of Ukraine (their individual provisions) on the constitutional complaint of a person who believes that the law of Ukraine applied in the final court decision in his case contradicts the Constitution of Ukraine. It is emphasized that the legal positions formulated by the Constitutional Court of Ukraine at making decisions are based on the systematic interpretation of constitutional norms in their interrelationship, the systematic and substantive analysis of constitutional provisions. However, the interpretative activity of the Constitutional Court of Ukraine is broader than the provision of official interpretation of the norms of the Constitution of Ukraine, it also covers interpretation during the constitutional review of normative acts, public (domestic and international) treaties and during the consideration of constitutional complaints. It was concluded that the interpretive activity of the Constitutional Court of Ukraine is broader than the provision of official interpretation of constitutional norms, it also covers interpretation during the constitutionality check of normative acts, public (domestic and international) treaties (and during the consideration of constitutional complaints). Interpretative acts are an auxiliary means of constitutional and legal policy, they have a derivative, secondary character in relation to normative and legal acts. However, their role in the activity of the Constitutional Court of Ukraine is difficult to overestimate, because they are able to ensure the implementation of high-quality constitutional and legal policy in almost all directions of its influence on legal validity. They are entrusted with the function of specifying the legal norms established by the legislator for their correct and effective implementation. As a tool of activity of the Constitutional Court of Ukraine, interpretative acts are characterized by the following features: they contain confirmation of the results of the interpretation of legal norms; are drawn up in accordance with the rules of legal technique; are accepted in a procedurally determined manner; are mandatory; capable of causing legal consequences.

Key words: interpretative legal act, interpretation, judicial law-making, judicial precedent, Constitutional Court of Ukraine, legal positions of the Constitutional Court of Ukraine, decision of the Constitutional Court of Ukraine.

1. Relevance of the research topic.

The modern period of development of domestic legal thought is characterized by increased attention to judicial law-making. Proponents of the idea of the possibility of recognizing decisions of higher courts as formal sources of law prove that they not only have an interpretative nature, but also establish new legal norms [1]. Their opponents, on the contrary, believe that the court only interprets and clarifies existing legal norms and cannot create new legal norms, motivating their position by the fact that judicial law-making, firstly, contradicts the principle of separation of powers, and secondly, is incompatible with the principle of legality [2–4].

It is generally accepted that new legal norms should not be created in the process of interpretation [5]. At the same time, in a number of works, interpretation is given "law-correcting" and "law-creating" functions, the functions of "compensating for technical ambiguities, inaccuracies and filling gaps in legal norms"; the so-called corrective (corrective) interpretation of legal norms, which makes it possible to change their content without changing the text of the normative legal act, is recognized as completely permissible and objectively determined [6].

According to Yu. Navrotska, the interpretative legal form is a complex, multifaceted, penetrating all the main forms of creation and implementation of law, the work of competent public authorities and their officials in clarifying and clarifying the content and goals of legal norms. It is characterized by general features of legal forms of activity, including: regulation by material and procedural norms of law, the ability to lead to legally significant consequences, connection with the consideration of legal cases, limitation and specificity of the subject composition, legal manipulation nature, formality (documentation) [7]. Modern practice of law enforcement shows that the results of interpretation often go beyond this process in terms of content. Without resorting to the description of numerous approaches to the problem of the essence of the process of interpretation of legal norms, the most appropriate, in our opinion, is the approach according to which the interpretive process consists of three consecutive stages: clarification, clarification and result. "The interpretation of legal norms is first of all a thought process that involves clarifying (understanding, comparing) and clarifying (detailing, clarifying) the content of the legal norm, which should contribute to its practical implementation, as well as the result (product) of this process, which is mostly drawn up as an interpretive legal act" [5, p. 8], O. Balynska notes.

And if elucidation is characterized by internal mental operations, then the elucidation and the result still have an objectified character. This is expressed in the fact that the process of interpretation must end with the development and formulation of some specific result (meaning), which must be expressed externally. Only in this case the process of interpretation can be considered complete. Such a logical conclusion of the interpretation process is the interpretative act.

At the same time, it must be recognized that it is difficult to distinguish between law-making and law-interpretive court decisions based on the criterion of universal binding, which is an attribute of a normative legal act, since acts of judicial interpretation can also have universal binding value.

Constitutional law-making is a special form (variety) of law-making, which has a multi-level and multi-aspect nature, which is determined by its special nature, essence and functional purpose. Constitutional law-making is a special activity of competent law-making subjects, which is carried out in a special procedural order and is aimed at adopting, changing and canceling the norms of the Basic Law of the state and constitutional acts of law-making [8, p. 88]. However, the specificity of the activity of the Constitutional Court of Ukraine (hereinafter referred to as the Constitutional Court) is that it does not administer justice in the literal sense. Its powers include: resolving issues of compliance with the Constitution of Ukraine (constitutionality), laws of Ukraine and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea; official

interpretation of the Constitution of Ukraine; resolution of questions about the conformity of the Constitution of Ukraine (constitutionality) of the laws of Ukraine (their separate provisions) on a constitutional complaint of a person who believes that the law of Ukraine applied in the final court decision in his case contradicts the Constitution of Ukraine (Article 7 of the Law of Ukraine "On the Constitutional Court of Ukraine" from 2017) [9].

Evaluating the activity of the KSU, it is worth noting that it acts to protect the foundations of the constitutional system, the basic rights and freedoms of a person and a citizen, ensuring the supremacy and direct effect of the Constitution of Ukraine. Ensuring the supremacy and direct effect of the Constitution of Ukraine is one of the important target features of the Constitutional Court of Ukraine. Its decisions contribute to the improvement of the current legislation by revealing the constitutional content of its individual provisions. The interpretive activity of the KSU rejects the possibility of violating the Constitution of Ukraine, deviating from the text and changing it. Where an interpreter goes beyond the Constitution, he is no longer interpreting but amending or violating the Constitution. In view of this, the Constitutional Court is obliged to observe the current Constitution. On the basis of the Constitution, the KSU makes decisions, and it must not allow its violation or changes [10, p. 44].

Therefore, marking the place of the acts of the Central Committee of Ukraine in the mechanism of legal regulation, it can be said that these acts have a special significance due to the role of this body in relation to the Constitution of Ukraine, which occupies a prominent place in the hierarchical system of sources of law.

2. The degree of scientific development of the research problem.

In light of the improvement of the legal system in practice, a significant role is assigned to the ability of modern lawyers to interpret the norms of law, however, scientific ideas about the interpretation of law are characterized by significant gaps in defining problematic issues of the theory and practice of interpretation, which complicates its practical use. In particular, in this area, it is worth highlighting the works of those scientists who studied the problems of legal interpretation in general (O. Koban, V. Kosovych, L. Legin, L. Luts, I. Nastasyak, I. Onyshchuk, P. Rabinovych, I. Shutak), as well as the interpretation of the Constitution as the Basic Law of Ukraine (M. Afanasyeva, M. Bilak, O. Dashkovska, A. Yezerov, M. Savchyn, A. Selivanov, V. Skomoroha, I. Slidenko, V. Tatsii, V. Tyhiy, T. Tsimbalisty, H. Hristova, V. Shapoval, S. Shevchuk, etc.). Individual researchers, considering the interpretation of legal norms through the prism of the discretionary powers of the court, define the interpretation in the process of law enforcement as the disclosure of the content of legal norms, in connection with which the authors allow the possibility of discretion by the court in the choice of behavior options, but immediately specify the identity of the result of interpretation and expressed in norms of the true meaning of the legislator's will (O. Anisimov, E. Yevgrafova, O. Shcherbanyuk).

3. The purpose of the article is to analyze the legal nature of the decisions of the Constitutional Court of Ukraine as interpretative legal acts, their features as fundamental acts in the activity of the constitutional control body.

4. Presentation of the material.

The application of constitutional values is primarily characteristic of the activities of constitutional courts and bodies of constitutional jurisdiction, which exist in most countries of the world. During the consideration of cases, the constitutional courts decide whether a specific norm corresponds to the law of the constitution, how it should be understood and applied in accordance with the constitutional and legal content [11]. Given this, the practice of constitutional courts is the most authoritative interpretation of the constitutional text.

Traditionally, the role of decisions of constitutional courts in legal systems is associated with the possibility of annulling an unconstitutional legal act through a decision and recognizing it as unconstitutional, in connection with which the body of constitutional jurisdiction is called a "negative legislator" [12]. If we analyze the question of the nature of the decision of the Supreme Court from the point of view of the formal-legal approach reflected in the current legislation, then the effect of the Law of Ukraine "On Law-Making Activity" does not extend to legal acts that do not contain legal norms, namely to the decisions and conclusions of the Constitutional Court of Ukraine (item 1 part 4 of article 4) [13]. Despite the fact that KSU decisions are not normative legal acts, most scientists agree that their legal nature differs from the nature of other acts or the Constitution of Ukraine itself.

The decisions of the constitutional courts are mostly considered as sources of law, but there is no consensus on the nature of the acts of the constitutional courts. Positions are expressed that "the existence of a law-making function of constitutional courts is a generally recognized fact", "the decisions of the constitutional court create norms of law, which follow the provisions of the constitution in terms of legal force"; the constitutional court "actually performs a quasi-law-making function"; his acts cannot be included in any of the sources of law or acts of an individual legal nature, etc. [14].

There is also a characterization of the decision of the constitutional court as a normative legal act according to the essential features of not so much a decision as this type of source of law, the normative nature of which is obvious. Such an approach consists in classifying decisions as normative legal acts based on the features of a regulatory legal act, which in many respects coincide with the features of a constitutional court decision (especially for a state with a legal system belonging to the Romano-Germanic legal family) [15, p. 296, 370].

In this regard, it is worth considering that although the emergence of constitutional control is traditionally associated with the Kelsenian model of the "basic norm" (Grundnorm) [15, p. 375], essentially, the genesis of constitutional control comes from the Anglo-Saxon legal tradition, the concepts of Holmes, Hart, Dworkin, the concept of a "living constitution", which refers to the objectification of law: in the context of the protection of human rights and freedoms, courts objectify the law in terms of detection, registration and promoting the realization of specific human rights and freedoms.

According to S. Paleshnyk, interpretive acts in judicial practice are written acts-documents adopted by courts of general jurisdiction of a higher level or by the Constitutional Court, which are characterized by their specific structure, content and form, thanks to which they play an auxiliary role in the mechanism of legal regulation of public relations Depending on which court adopted them, they can be classified as both normative and individual acts. If such an act is adopted by the Constitutional Court of Ukraine, it will perform a regulatory function and may be an auxiliary source of Ukrainian law [16]. If we examine normativity as an essential property of the decisions of constitutional courts not as acts, the form of which is determined by the legislator, or not determined (in most European states), but in accordance with their nature, then this feature is inherent in the decisions of constitutional courts regarding the verification of the constitutionality of an act.

In its decision in the case "Olexandr Volkov v. Ukraine", the European Court of Human Rights noted the role of interpretation: "...the Court recalls that the existence of a specific and consistent practice of interpreting the relevant provision of the law was a factor that led to the conclusion regarding the foreseeability of the specified provision. Although this conclusion was made in the context of the common law system, the interpretation carried out by judicial authorities cannot be underestimated in continental law systems in the case of ensuring the predictability of statutory provisions. It is these bodies that must consistently interpret the exact meaning of the general provisions of the law and dispel any doubts regarding its interpretation" [17]. In many countries of the world, the appeal of a normative legal act by a state body leads to the binding of the decision made by the constitutional court for all participants in the legal relationship (the effect of decisions erga omnes is universally binding) [18, p. 21].

Therefore, questions about the nature of decisions of constitutional courts are usually considered through the prism of interpretation - as a special interpretation of the norms of the constitution

[19; 20]. Thus, in the case of a submission or appeal regarding the official interpretation of the Constitution and laws, it is an official normative interpretation, which is universally binding, and in all other cases – a casual interpretation of the Constitution, laws and other legal acts, which is contained in the motivational part of the decisions and conclusions of the KSU , is binding only within the limits of a certain case and does not acquire the characteristics of normativeness. This approach is quite common. However, the peculiarities of those acts of interpretation of the Civil Code issued in the process of constitutional control significantly distinguish it from the traditional understanding of casual interpretation, and this does not allow limiting it to the framework of a specific case [2]. On these grounds, V. Tyhiy proves that the decisions of the Constitutional Court of Ukraine on normative interpretation are interpretative acts. They have normative content, as they contain explanatory norms, but are not normative legal acts. After all, the main function of the latter is the establishment of new legal norms or the cancellation or change of existing ones. Decisions of the Constitutional Court of Ukraine on normative interpretation do not have such a function, such quality [21]. Thus, in the decision of the KSU of December 27, 2001 No. 20-рп/2001 in the case of the constitutional submission of 139 people's deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of the decrees of the Presidium of the Verkhovna Rada of Ukraine "On the temporary suspension of the activity of the Communist Party of Ukraine" and "On the prohibition activities of the Communist Party of Ukraine" (the case about the decrees of the Presidium of the Verkhovna Rada of Ukraine regarding the Communist Party of Ukraine, registered on July 22, 1991) argues that the signs of the normative nature of legal acts are the uncertainty of their effect in time and the repeated use of them. The specified decrees do not concern individually defined subjects, but cover a wide range of them and are designed for repeated application [22].

Unlike the constitutional control bodies of other countries, the Constitutional Court of Ukraine is empowered to officially interpret the norms of the Constitution of Ukraine. It is in connection with this that the opinion was expressed in legal science that the normative official interpretation of the Basic Law by the Constitutional Court corresponds to the intention of the legislator. However, the absence of such normative interpretation in the form of a separate authority does not "automatically" mean the non-normative nature of the interpretation carried out by the Constitutional Court during dispute resolution. This is indicated by P. Sinitsyn, noting that the interpretive act has a normative content [23, p. 49].

In general, the interpretation of the national constitution is a traditional competence of the constitutional courts. This authority is aimed at finding a balance in the event of a legal or political conflict between different branches of government based on the constitutional text, orienting all participants in social relations to identify the resource of the national constitution without more radical political and legal decisions, which may consist, for example, in changing the constitutional text.

Regarding the casual interpretation as the interpretation of the legal norm by the court when applying it during the decision of a specific case, the Constitutional Court during the consideration of a specific case on the conformity of a normative legal act with the Constitution also gives a casual interpretation of the constitutional norm in the process of its application: how a parliamentarian should ideally represent a part of the population and to personify the expression of the people's will, receiving at the "output" of the parliamentary procedures a specific article of the law, as well as the "judge of the Constitutional Court", "passing" the constitutional text through a highly professional legal consciousness, "creates" the decision of the Constitutional Court, interpreting the Constitution. The conclusion regarding the general obligation of both normative and casual interpretation of the Civil Code is confirmed by the provisions of Art. 150 of the Constitution of Ukraine [24] and Art. 69 of the Law of Ukraine "On the Constitutional Court of Ukraine" [9], which refers to the bindingness and finality of its decisions and conclusions as a whole, and not only their decisive parts. The motivational part constitutes an inseparable unity with the resolutive part, revealing the constitutional content of the legal norm and comparing it with the legislator's position.

This approach is significantly different from the precedent and its legal justification (ratio decidendi), which in the Anglo-Saxon system is directly referred to by the general court during the consideration of a specific case. The question arises as to whether the constitutional court, which has already ruled on the unconstitutionality of any normative legal act, can recognize another normative legal act as

unconstitutional by analogy, referring to its previous decision, and not to the norm of the constitution (which will determine the precedent nature of the decision). . Of course, the defendant - the law-making body has the right to wait for the consideration of his question based on the norms of the constitution and the rendering of a separate decision on it. The general court must justify its decision based on the norms of the constitution, in particular on the content of the constitutional norm interpreted by the constitutional court, and already in this connection the general court can refer to the decision of the constitutional court. Therefore, "KSU decisions are precedents of constitutional justice, which are issued within the framework of constitutional judicial proceedings by a single body – the Constitutional Court. The legal positions of the KSU are not "ordinary" court precedents, but precedents of interpretation" [2] - it is rightly emphasized in the domestic legal literature.

As S. Shevchuk notes, the application of precedents of the interpretation of the Civil Code as normative provisions, or more precisely, their "following" by other courts, is similar to the application of "classical" normative legal acts, which causes the inclusion of the decisions of the Civil Code among "quasi-precedents" [25]. However, at the same time, a number of issues arise that lie in the area of legitimization of social values, for example, regarding a transparent legal methodology applicable in cases where it is about introducing new values into constitutional law or when it is necessary to give "life" to the values laid down in the constitution, or in the situation of introduction of external values to the constitution. In such cases, judges face difficulties related to issues of judicial discretion.

It is important to pay attention to the difficulty of identifying the objective content of constitutional norms: the content of the norm formulated by the legislator must be clear. Although it is difficult to disagree with the opinion that "a legal text (constitution) can be wiser than its author and interpreter" [19]. Judges of constitutional courts cannot claim special, "quasi-sacred knowledge" of an extra-constitutional nature. At the same time, society "needs a thinking judge who gravitates towards justice, compares the norm of the law and the principles of justice, evaluating the law, but not applying it as an instruction for the exploitation of society" [26, p. 1]. For example, on December 4, 2023, the Advisory Group of Experts approved the Methodology for assessing moral qualities and the level of competence in the field of law, which will be used during the selection of candidates for the positions of judges of the Constitutional Court of Ukraine. As the KSU website emphasizes, "The methodology will be a kind of instruction for both the Advisory Group of Experts and candidates for the positions of judges of the KSU. It includes criteria of moral qualities and competence in the field of law" [27].

Undoubtedly, the implementation of constitutional control requires high professional legal awareness of judges with stable ideas about the "constitutional parameters" of the value model of society and the state. However, the constitutional control of the current legislation is not exhausted by a simple comparison and coordination of the latter with the constitutional norms. It is important to find out the meaning of constitutional norms in the form of various types of interpretation, in particular, it is about the "positive", objectified "letter" of the Constitution, as well as the interpretation of the content of the norm, which allows to reveal its spirit ("living meaning in each given period of time"), the essential implicit meaning due to the high degree of abstractness, the generalization of constitutional formulations [28, p. 180–182].

Note that the current legislation does not contain the concept of acts of the Constitutional Court of Ukraine. The Constitution of Ukraine [24], the Law of Ukraine "On the Constitutional Court of Ukraine" [9], as well as the Regulations of the Constitutional Court of Ukraine [29] define only the types of such acts: they are decisions, conclusions and resolutions. Acts of the Constitutional Court of Ukraine occupy a special place in the system of legal acts, as they combine the qualities of interpretative and normative acts. Interpreting the Constitution and laws of Ukraine, they find out their true meaning and form a unified constitutional legal understanding [30, p. 64]. "The special legal status of the acts of the Constitutional Court of Ukraine is also indicated by the purpose with which they are adopted - ensuring the rule of law and the highest legal force of the Constitution of Ukraine" [31], O. Martzelyak emphasizes. Most often, this activity is related to the identification of the axiological aspect of constitutional norms, since the process of knowing the content during interpretation is inextricably linked with its evaluation and reference to the value characteristics of the constitutional norm.

Leading European scientists express an opinion about the responsibility of judges to society in the case of their application of general approaches developed in the field of legal axiology, and emphasize the need to develop a methodology that will enable solving the problem of mediation of social values by law, introducing new social values into the constitution [32]. That is why, from the standpoint of constitutional axiology, the concept of interpretation has a double meaning. On the one hand, it is an internal cognitive process, which consists in clarifying the meaning of legal norms, establishing their content. On the other hand, it is an external expression, the result of a cognitive (thinking) process, clarification of the content of legal norms. Thus, I. Nastasyak singles out three functions of the process of interpretation of legal norms: 1) compensation of technical ambiguities, inaccuracies and filling of gaps in legal norms; 2) interpretation of generalized legal concepts for the purpose of legal implementation; 3) interpretation of legal norms taking into account generally recognized principles of humanity, respect for human rights and justice. The first of these functions is extraordinary in the sense that it is implemented only in case of detection of defects in legal norms, the other two are ordinary, mandatory for any application of a legal norm [33, p. 67]. Therefore, the interpretation of constitutional norms by the constitutional court is subject to the general rules of interpretation: a new norm is not created; it is about the application of the norms of the constitution during the resolution of a specific case; the special nature of the interpretation is expressed in its importance for the legal system: the normative nature of the casual interpretation of the constitution is due to the nature of constitutional law enforcement, according to which the general nature of constitutional prescriptions implies the special significance of the interpretation of these orders, their general obligation.

Meanwhile, the result of the interpretation can be different in terms of content, which depends on the methods of interpretation, which are divided into static and dynamic.

Static interpretation is understood as the process of identifying the only possible meaning of the norm, determined by the will of the legislator that has not changed over time. Dynamic interpretation, on the contrary, is conditioned by the changeability of the real content and meaning of the legal norm over time, "because the law itself is capable of changing for some time even within the limits of old legal forms" [34]. According to the static approach, interpretation has the character of clarifying the literal content of the norm for the purpose of law enforcement. And within the framework of the dynamic approach, the normative field for interpretative activity appears to be wider. It includes, in addition to the norm itself, the basic principles of law (in the case of a natural-law approach) and various evaluation categories (in the case of a sociological approach). The use of interpretation in such a case is rather related to the adaptation of the existing legal regulation to real social relations, which often leads to the adjustment of positive law. It is not difficult to guess that the basis of the distinction between these approaches is the presence in the process of interpretation of the stage of logical clarification of the content of the legal norm.

In confirmation of the above, a number of decisions of the Constitutional Court of Ukraine can be cited, which are the most vivid examples of revealing the implicit content of constitutional norms [35; 36], and separate opinions of judges of the Constitutional Court of Ukraine in this area [37; 38].

Therefore, the legal positions formulated by the Constitutional Court of Ukraine when issuing decisions are based on the systematic interpretation of constitutional norms in their interrelationship, the systematic and substantive analysis of constitutional provisions. However, the interpretative activity of the Constitutional Court of Ukraine is broader than the provision of official interpretation of the norms of the Constitution of Ukraine, it also covers interpretation during the constitutional review of normative acts, public (domestic and international) treaties and during the consideration of constitutional complaints. However, from the point of view of legal technique, interpretative activity is precisely the process of interpreting legal norms using various methods and techniques of legal hermeneutics. The application of the techniques of legal hermeneutics, which provide an opportunity to reveal the content of the text of a legal norm taking into account the circumstances under which it should be applied, aims to ensure its implementation in accordance with a specific situation, as well as to guarantee the stability and predictability of the legal situation during its implementation [39] .

The legal interpretation activity of the Constitutional Court of Ukraine creates the necessary conditions not only for the exact, uniform and consistent implementation of legal prescriptions: its

decisions must correspond not only to the "letter" but also to the "spirit" of the law, the general principles of law. It is the specified interpretative activity, and not a simple reproduction of the text of the Constitution of Ukraine, that is the basis for proper law enforcement in a state governed by the rule of law, which must function on the basis of the principle of the rule of law [23, p. 45].

The above shows that thanks to the decisions of the constitutional courts, the regulatory potential of the constitution is strengthened, constitutional norms of a general nature are "implanted" into the existing legal organism. In its turn, the provision of the constitution is a criterion for the constitutional-legal interpretation of the norm of the law under review (another normative legal act) and is most often recognized as not contradicting the constitution in the constitutional-legal sense revealed by the constitutional court, maintaining its force and acting within the limits of its constitutional interpretation . In this regard, the opinion of I. Slidenko is correct that "no other body is capable of providing such a high professional level of interpretation, because it is the Constitutional Court of Ukraine, in particular, that harmonizes doctrinal and competent interpretation" [40].

Elucidation of the constitutional and legal content of the norms of laws that are being checked for constitutionality takes place with the help of updating the axiological content of the norms of the Constitution of Ukraine. The decision of the Constitutional Court of Ukraine enshrines the revealed content and draws the attention of the law enforcer to the admissibility of applying a specific rule of law, taking into account its revealed constitutional and legal content contained in the Court's decision. In this context, S. Shevchuk is right, who notes that "without an extended, creative interpretation by the court, the Constitution of Ukraine may remain a programmatic document consisting only of positive norms (letters), which does not take into account the constitutional spirit, unwritten constitutional norms and values, without which the Constitution of Ukraine cannot serve as an effective tool for limiting state power" [41, p. 37]. This is how the "chain" is built: from the constitutional norm through the decision of the Constitutional Court to the norm of the law, while the decision ensures the constitutionality of the entire "chain", both influencing the full implementation of the constitutional norm and anticipating the unconstitutionality of law enforcement.

It is worth noting that the legal positions of the KSU are formulated in both the resolutive and motivational parts of its decisions, which, when considering the issue of sources of law, makes it possible to consider the decisions of the KSU as such, and not its separate legal positions, which are in this or that part decision. That is why it is worth paying attention to the unity of the motivational and resolutive parts of the decisions of the KSU, each of which contains normative provisions.

The argumentation of scientists seems convincing that the legal positions expressed in the resolutive or in the motivational part of the act of the CSU are a mandatory part of the act of constitutional justice for the law enforcement officer, which is, accordingly, the source (form) of law. Thus, the well-known constitutional scientist M. Savchyn notes that the acts of constitutional jurisprudence form significant empirical material, contain a number of established practices (jurisprudence) of the KSU, which can serve as a guide for further law-making work, influencing the constitutional tradition, unity and stability of the legal system [42].

Acts of constitutional justice are actually a source (form) of law, and it will be the court that considers a specific case that will distinguish the mandatory and non-mandatory parts of them as sources (forms) of procedural law. It is this court that will determine whether the legal conflict resolved by it should be considered a "ratio decidendi" (a direct, mandatory basis for making a decision), and an "obiter dictum" (what was said in passing) is what legal position contained in the decision of the KSU, should be applied when deciding the case under his consideration. We cannot rule out the possibility that when resolving one type of dispute, the general court will accept as "ratio decidendi" one part of the act of constitutional justice, and when resolving another type of dispute - another part. Similarly, this process can affect differences between similar legal disputes (eg differences in subject composition). As Yu. Navrotska emphasizes, the specificity of the subject composition of interpretive activity is determined by a number of factors: from the specific model of the form of government to the peculiarities of the national legal system [7, p. 39]. In Ukraine, the only body authorized to provide an official interpretation of the Constitution is the Constitutional Court of Ukraine (clause 2, part 1, article 150 of the Constitution of Ukraine) [9]. Instead, the Plenum of the Supreme Court, based on the results of the analysis of judicial statistics and the generalization of judicial practice, provides an

explanation of a recommendatory nature on the application of legislation in the resolution of court cases (clause 102, part 2, article 46 of the Law of Ukraine "On the Judicial System and the Status of Judges" [43]) .

And, just as a higher court can correct the incorrect application of a rule of law, the higher court can correct a lower court when the latter uses that part of the KSU resolution that is not "ratio decidendi".

Therefore, regarding the problem of distinguishing between "ratio decidendi" and "obiter dictum", it is worth noting that in the decisions of the Constitutional Court of Ukraine, not only the resolutive, but also the motivational part is binding, and for different categories of cases, different parts of its decisions will be binding.

From a formal and legal point of view, it should be noted that the current legislation also speaks of the binding nature of the decisions of the KSU, not their parts. In addition, the interpretation of the Constitution of Ukraine given by the CSU is official and binding for all subjects participating in legal relations, and the recognition by the CSU of a law applied in a certain case that does not correspond to the Constitution of Ukraine is a basis for revising the decision. Therefore, in the specified cases, the legal positions of the KSU should be considered as universally binding rules of conduct, designed for repeated application of an indefinite circle of persons, i.e. legal norms, the form of external expression of which is the decision of this Court and its resolutions with a positive content. This approach makes it possible to avoid confusion of form and content.

Along with the formulation of legal positions in decisions, the activity of constitutional courts to identify gaps is of great importance for the development of legislation. Given the fact that in this case the assessment of probity takes place through the prism of constitutionality, constitutional courts determine the spheres of social relations that must be regulated by law, based on their significance in specific spheres of human life. However, according to scientists, when there are gaps in the law, the Constitutional Court of Ukraine should refuse to interpret, because in such cases there is no object for interpretation, just as there is no legal norm itself that could be subject to interpretation [44, p. 164]. As an example, it is worth citing the resolution of the Central Committee of Ukraine "On Termination of Constitutional Proceedings in the Case of the Constitutional Submission of the People's Deputies of Ukraine Regarding the Conformity with the Constitution of Ukraine (Constitutionality) of the Decrees of the President of Ukraine on the Appointment of First Deputies, Deputy Ministers and Deputy Heads of Other Central Executive Bodies of Ukraine, Issued During July- December 1996 and January 1997". The Constitutional Court of Ukraine noted here that "the filling of gaps in the laws is not under the jurisdiction of the Constitutional Court of Ukraine" [45]. In addition, in its decision dated March 25, 1998, the KSU stated that "filling gaps in laws, certain provisions of which are recognized as unconstitutional by the Constitutional Court of Ukraine, does not belong to its powers" [46]. Therefore, if the Constitution of Ukraine does not provide for the regulation of certain relations, the Constitutional Court of Ukraine, as a rule, should refrain from the official interpretation of the relevant norms of the Constitution until the issuance of such a law, so as not to bind the legislator in these matters and not to be bound by its own decision [47].

For the institute of constitutional control, the powers to identify gaps are quite traditional. In this area, the constitutional courts of European states have developed considerable practice, which shows that after reaching a conclusion about the lacunae of the legislation during the consideration of the constitutionality of a specific regulatory legal act, the constitutional control body offers the regulatory bodies to adopt the relevant regulatory legal act (provisions of the act) aimed at elimination of identified gaps [12]. Most often, the courts indicate possible ways of legislative solution to the problem, or emphasize the factors that must be taken into account, the goals that must be achieved, but always refrain from formulating legal norms, observing the separation of competences, the principle of separation of powers.

5. Conclusions.

One of the functions of the Constitutional Court of Ukraine is the interpretation of the norms of the Constitution of Ukraine. During the adoption of decisions, the KSU provides a normative and legal explanation of the provisions of the Constitution, which are of a universally binding nature,

which makes them very similar to normative legal acts. However, the interpretive activity of the Constitutional Court of Ukraine is broader than the provision of official interpretation of constitutional norms, it also covers interpretation during the constitutionality check of normative acts, public (domestic and international) treaties (and during consideration of constitutional complaints). Interpretative acts are an auxiliary means of constitutional and legal policy, they have a derivative, secondary character in relation to normative and legal acts. However, it is difficult to overestimate their role in the activities of the KSU, because they are able to ensure the implementation of high-quality constitutional and legal policy in almost all directions of its influence on legal validity. They are entrusted with the function of specifying the legal norms established by the legislator for their correct and effective implementation. As a tool of KSU activity, interpretative acts are characterized by the following features: they contain consolidation of results of interpretation of legal norms; are drawn up in accordance with the rules of legal technique; are accepted in a procedurally determined manner; are mandatory; capable of causing legal consequences.

In view of this, one of the most important ways to increase the effectiveness and expediency of the use of interpretative acts of the CSU is to find an adequate understanding and reflection in the current legislation of legal interpretation activity, its tools, general principles and standards of interpretation technique and technology. Therefore, it can be argued that the decisions of the Constitutional Court of Ukraine are the results of legal interpretation practice. Considering the independent importance of interpretative acts of the CSU in the process of learning the legal reality, it is expedient to standardize the concept of an interpretive legal act of the CSU; a list of subject, temporal, spatial and subject boundaries of the dissemination of the act of interpretation; "retroactivity" parameters of the provisions of the interpretative legal act; basic requirements for the structural elements of the interpretive legal act, etc.

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