

IMPLEMENTATION OF THE CONSTITUTION OF UKRAINE AS AN ACT OF DIRECT ACTION THROUGH THE PRISM OF LAW ENFORCEMENT PRACTICE

Podorozhna Tetyana

DOI: <https://doi.org/10.61345/1339-7915.2025.5.8>

Annotation. The article examines the property of the Constitution of Ukraine as an act of direct action through the prism of law enforcement practice. It is emphasized that the issues of interaction between the courts of Ukraine and the Constitutional Court of Ukraine regarding the application of the provisions of the Constitution of Ukraine of June 28, 1996, in particular regarding the consequences of decisions, are of great importance for ensuring legal certainty, predictability of law enforcement practice within the entire legal system, and effective protection of human and citizen rights and freedoms. The direct application of the Constitution of Ukraine by courts is not only a theoretical construct, but also a necessary element of the functioning of a fair and effective judicial system that ensures the protection of human and citizen rights and freedoms. The application of the provisions of the Constitution of Ukraine without indirect regulatory legal acts is one of the forms of direct implementation of the Constitution. This is necessary to ensure the supremacy of the Constitution as the Fundamental Law of the State, as well as effective protection of human rights, effective and fair justice. It is noted that the direct effect of the norms of the Constitution is a legal property of the norms of the Fundamental Law, which has a legal character, expresses the rule of action and implementation of the norms of the Constitution regardless of the presence of regulatory legal acts that specify them. This property is not limited by anything, that is, even in the case of the need to detail constitutional norms, such specification is carried out on the basis of constitutional legal provisions and is aimed only at their development for the purpose of practical implementation. And the application of the Constitution of Ukraine, especially in the activities of the courts, is a process by which this property is ensured. It is emphasized that direct effect is a property and principle of the Constitution as an act of higher power, which does not provide for a dynamic characteristic of the process of applying constitutional norms. And it is precisely in the possibility of their direct application in ensuring the implementation of the rights and legitimate interests of citizens of Ukraine, in particular in the implementation of their judicial protection, that the value of constitutional norms lies. It is concluded that the principle of direct action of the Constitution of Ukraine transforms it from a political document that establishes statehood into a political and legal legal document. The direct action of the Constitution is the basis of the legal system, the system of law enforcement, and constitutional norms are the foundation for the system of law and all branches of legislation, which, given the higher legal force of the Constitution, should not contradict them. It is emphasized that the direct action of the Constitution is perceived as the possibility of direct implementation of its legal norms. At the same time, constitutional norms are capable of application regardless of their specification in sectoral legislation.

Key words: Constitution, direct action of the Constitution, human rights, supremacy of the Constitution, rule of law, implementation of the Constitution, Constitutional Court of Ukraine, legal system, court, application of the Constitution.

1. Introduction.

When applying legal norms, discrepancies may arise between the current regulatory legal acts that regulate the same legal relations (conflict of legal acts). In such a case, it is recommended to be guided by the generally accepted provisions of the conflict of laws. However, this can be avoided if the provisions of the Constitution of Ukraine are directly applied as an act of direct action.

Researchers are unanimous in the opinion that the issues of interaction between the courts of Ukraine and the Constitutional Court of Ukraine (hereinafter referred to as the CCU) regarding the application of the provisions of the Constitution of Ukraine of June 28, 1996, in particular regarding the consequences of the decisions of the CCU [1]. The direct application of the Constitution of Ukraine by the courts is not only a theoretical construct, but also a necessary element of the functioning of a fair and effective judicial system that ensures the protection of the rights and freedoms of man and citizen. After all, direct appeal to the Constitution of Ukraine allows courts to promptly and effectively protect the constitutional rights and freedoms of man and citizen, without waiting for the adoption of laws for each specific legal situation.

Therefore, despite the existence of laws and other regulatory legal acts that regulate specific relations, the Constitution of Ukraine must be applied by courts directly. The application of its provisions without indirect regulatory legal acts is one of the forms of direct implementation of the Constitution. This is necessary to ensure the supremacy of the Constitution as the Fundamental Law of the State, as well as effective protection of human rights, effective and fair justice.

The implementation of the Constitution of Ukraine as an act of direct action (Article 8) [2] means that its norms are the highest in legal force and are applied directly, even without special laws. Courts, authorities and citizens have the right to appeal to the Constitution if laws contradict it, which ensures real protection of human rights in Ukraine. In addition, the law and other regulatory legal acts have, so to speak, a "framework" regulation, which in turn is based on certain constitutional norms and principles. The norms of the "framework" legislation do not have direct effect, but in most cases are of a referential nature, and also provide for further specification of certain social relations in sectoral legislation.

2. The degree of scientific development.

The significance and value of constitutional and legal principles and constitutional and legal norms are undeniable. And one of the aspects of this thesis is the possibility of their direct implementation in real social relations. On this basis, the problems of implementing the Constitution of Ukraine as an act of direct action were considered in their works by such well-known legal scholars as M. Baymuratov, O. Batanov, M. Bilak, O. Borislavska, V. Venger, A. Yezerov, V. Campo, A. Ivanovska, V. Lemak, V. Campo, V. Kravchuk, D. Terletsky, A. Selivanov, A. Krusyan, O. Martselyak, N. Onishchenko, N. Parkhomenko, O. Petryshyn, S. Riznyk, M. Savchyn, O. Skrypnyuk, E. Chernyak, Yu. Shemshuchenko. The provisions and conclusions set forth in their research allow for a more complete disclosure of the issues of constitutionalization of the legal system in general, the interpretation of constitutional norms by the Constitutional Court of Ukraine.

3. The purpose of the article is to investigate the problems of implementing the Constitution of Ukraine as an act of direct action through the prism of law enforcement practice.

4. Presentation of the material.

The phenomenon of the Constitution is not limited to its text (formal content) - it constitutes a system of basic values designed to limit any manifestations of arbitrariness of public authorities in order to guarantee human rights. As a text, as a system of legal provisions, the Constitution reveals its normative content as a fundamental law that establishes the organization of public authorities and establishes a catalog of fundamental rights and freedoms. In such a context, people usually speak about the legal properties of

the Constitution, including the highest legal force and direct effect of its norms. It is in this role that the Constitution is at the top of the hierarchy of sources of law, which it itself establishes [3, p. 11].

The Constitution is the Fundamental Law of Ukraine. Article 8 of the Constitution of Ukraine establishes that the principle of the rule of law is recognized and operates in Ukraine; the Constitution of Ukraine has the highest legal force; laws and other regulatory legal acts are adopted on the basis of the Constitution and must comply with it [2]. The legislative bodies of Ukraine, when carrying out their normative activities, must conduct an examination of draft laws for compliance with the Constitution. The norms of the Constitution of Ukraine are norms of direct action. Appeal to the court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Constitution of Ukraine is guaranteed.

Article 152 of the Constitution of Ukraine stipulates that laws are recognized as unconstitutional if they do not comply with the Constitution of Ukraine, and then they lose their validity from the date of adoption by the Constitutional Court of Ukraine of a decision on their unconstitutionality, unless otherwise established by the decision itself, but not earlier than the date of its adoption. As for the damage caused by acts and actions that are recognized as unconstitutional, the state compensates for it in accordance with the procedure established by law [2]. Therefore, ignoring the requirement of direct effect of constitutional norms in any legal relations – both before the emergence of a legal dispute and at the stage of its resolution through the execution of a court decision – will cast doubt on and make illusory the very right to apply to court on the basis of constitutional norms. Therefore, even an extremely literal interpretation of Part 3 of Article 8 of the Constitution of Ukraine does not give grounds to limit the application of the concept of direct effect of constitutional norms exclusively to the moment of applying to court, but should also extend to other areas of legal regulation [3, pp. 22–23].

Direct effect of the norms of the Constitution is a legal property of the norms of the Fundamental Law, which has a legal character, expresses the rule of action and implementation of the norms of the Constitution regardless of the presence of regulatory legal acts that specify them. This property is not limited by anything, that is, even in the event of the need to detail constitutional norms, such specification is carried out on the basis of constitutional legal provisions and is aimed only at their development for the purpose of practical implementation. And the application of the Constitution of Ukraine, especially in the activities of the courts, is a process by which this property is ensured.

So, in our opinion, direct action is a property and principle of the Constitution as an act of higher power, which does not provide for a dynamic characteristic of the process of applying constitutional norms. And it is precisely in the possibility of their direct application in ensuring the realization of the rights and legitimate interests of citizens of Ukraine, in particular in the implementation of their judicial protection, that the value of constitutional norms lies. “The Constitution of Ukraine carries within itself the great potential of a modern democratic state, highlighting the judicial system as a separate power capable of applying the criteria of law and justice in resolving disputes, protecting the rights and freedoms of man and citizen” [4, p. 361], – A. Selivanov rightly emphasizes. The correct and timely application of constitutional norms fully ensures the functioning of Ukraine as a state of constitutional democracy.

The direct (immediate) effect of the Constitution should be understood as the property of its norms to exert a direct regulatory influence on all those to whom they are addressed. This legal category, in our opinion, is broader than the concept of direct (direct) application of the Constitution, since the application of constitutional norms is a manifestation of their regulatory influence, that is, it is only one of the components of the concept of direct (direct) action.

It is worth noting that the value orientation of constitutional regulation consists in the direct application of the Constitution not as an ordinary legal regulator, but as an instrument for ensuring the operation of the Constitution in general. Accordingly, to overcome conflicts of legislative provisions, it is not so much the presence of a specific constitutional norm that can “replace” a norm of law, give preference to a certain law or norm, or otherwise resolve a conflict dispute, as the value orientation of constitutional provisions. For example, when resolving a contradiction between the legislation on freedom of movement and the electoral legislation regarding the grounds for determining the electoral address of a voter, of course, in addition to the specific provisions of the Fundamental Law of Ukraine regarding the content of active

electoral law, it is also necessary to take into account the principles of electoral law enshrined in the Constitution of Ukraine, and most importantly, the essential meaning of such principles in accordance with doctrinal developments and relevant international standards [3, p. 32]. In view of this, the principle of direct effect of the Constitution of Ukraine transforms it from a political document that establishes statehood into a political and legal document. The direct effect of the Constitution is the basis of the legal system, the law enforcement system, and constitutional norms are the foundation for the legal system and all branches of legislation, which, given the higher legal force of the Constitution, should not contradict them.

It is important that the direct effect of the Constitution is perceived as the possibility of direct implementation of its legal norms. At the same time, constitutional norms are capable of application regardless of their concretization in sectoral legislation. According to scientists, the direct effect of the Constitution and constitutional norms means, first of all, determining the vector of development of the national legal system in general and the specific method of norm application in each specific case. The legislative system should be formed in such a way that the content and meaning of constitutional norms are continued (detailed, specified) in other regulatory legal acts [3, p. 26]. At the same time, it must be recognized that the direct application of constitutional norms can cause certain difficulties due to the fact that many of them have a high degree of generalization, which requires specification in the current legislation of various branches of law. The implementation of the direct effect of the Constitution can be a complex process associated with a high degree of generalization of legal norms. Many constitutional norms are conceptual in nature. These norms are usually norms-principles. They may be specified in the current legislation, or they may not be. Regardless of this, the law enforcement officer must apply them. When establishing the fact of a conflict of a constitutional norm with the norms of other regulatory legal acts, the Constitution of Ukraine is also applied. This rule also applies to cases where there is no decision of the Constitutional Court of Ukraine. After the adoption of the decision of the Constitutional Court of Ukraine, the provisions of the Constitution are subject to application, taking into account the legal position formulated in the decision of the Constitutional Court of Ukraine. This is due to the higher legal force of the Constitution of Ukraine and its direct effect.

The application of the Constitution, as compared to other law enforcement activities, is a more complex process, the features of which are most clearly manifested in the activities of the Constitutional Court. Thus, according to Art. 7 of the Code of Administrative Procedure, the court decides cases in accordance with the Constitution and laws of Ukraine. If the court concludes that a law contradicts the Constitution of Ukraine, it does not apply it, but applies the norms of the Constitution of Ukraine as norms of direct effect. In such a case, after rendering a decision in the case, the court applies to the Supreme Court to resolve the issue of submitting a submission to the Constitutional Court of Ukraine on the constitutionality of the law [5]. At the same time, the Supreme Court draws attention to the fact that court decisions must be based on current legislation that does not contradict the Constitution of Ukraine. The prescription of an act that is recognized as unconstitutional cannot be applied by courts [6].

Therefore, courts should not apply the provisions of laws that do not comply with the Constitution, regardless of whether the Constitutional Court of Ukraine has recognized them as unconstitutional, i.e. laws that contradict the Constitution of Ukraine cannot be applied even in cases where they are in force. It should be noted that this position was expressed in the Resolution of the Plenum of the Supreme Court of Ukraine No. 9 dated 01.11.1996 "On the Application of the Constitution of Ukraine in the Administration of Justice" [7].

In addition, the decision of the Constitutional Court of Ukraine has direct (prospective) effect in time and is applied to those legal relations that continue or arose after its adoption. If the legal relations are ongoing and arose before the adoption of the Constitutional Court of Ukraine decision, but continue to exist (after the adoption of the decision), then the effect of such a decision applies to them. That is, the decision of the Constitutional Court applies to legal relations that arose after its adoption, as well as to legal relations that arose before its adoption and continue after that [8].

The direct (prospective) effect of the decision of the Constitutional Court of Ukraine concerns primarily the procedure for its implementation and does not affect the imperative provisions of procedural norms that the provisions of a regulatory legal act that contradict the Constitution of Ukraine cannot be applied by the court [9; 10].

In the process of considering cases, courts must assess the content of the claims and the circumstances of the case (disputed legal relations) taking into account the constitutionality (unconstitutionality) of the norm of the law that is subject to application. The court does not apply a law that contradicts the Constitution of Ukraine, but applies constitutional norms as norms of direct effect, regardless of the presence (absence) of a decision of the Constitutional Court of Ukraine on the unconstitutionality of such a law or other legal act, the stage of consideration of the case and the moment of the emergence of the disputed legal relations [9; 10].

Therefore, the peculiarities of law enforcement in the sphere of constitutional justice are determined by the complexity of identifying the content of constitutional norms, principles and values, the need for an axiological dimension of theoretical constructs enshrined in modern constitutions, the special legal nature of decisions of constitutional courts, and the high professional legal awareness of judges.

Based on judicial practice and scientific and theoretical research, it is worth noting that direct (immediate) application of the Constitution can be understood as a reference to the Basic Law, necessary for regulating certain legal relations that have arisen, and its application for interpretation. The latter can be carried out by both the constitutional control body (interpretation in decisions of the Constitutional Court of Ukraine (see: [11; 12; 13])), and other courts (for example, courts of general jurisdiction).

The doctrine of the direct effect of the Constitution of Ukraine is applied in conjunction with the issue of ensuring guarantees of direct appeal to the court on the basis of the norms of the Constitution of Ukraine (part 3 of article 8) [2]. This issue in the practice of administrative proceedings is related to the application of the provisions of article 7 of the Code of Administrative Procedure of Ukraine [5]). Although similar provisions are contained in other procedural codes.

However, as the judge of the Supreme Court M. Bilak argues, the main difficulty in the application of article 7 of the Code of Administrative Procedure by administrative courts in connection with the application of the doctrine of the direct effect of the Constitution arises in the case when the law of Ukraine or another legal act contradicts the Constitution of Ukraine, given the declarative nature of its norms. Such difficulty lies in determining the constitutional provisions that may be the material basis for a court decision in a specific dispute [14].

The inclusion of a constitutional norm in the text of the law does not mean its concretization. The concretization of a constitutional norm is the norms of law that express its essence and do not go beyond its limits. Such norms of law must comply with the Constitution, its content and spirit. At the same time, constitutional principles can be implemented in legislation in various ways due to their general nature, but the principle itself cannot be violated.

It is well known that the concretization of the provisions of the Constitution of Ukraine occurs in the current legislation of Ukraine. Its legislator adopts it in accordance with the Fundamental Law of Ukraine. However, in practice, it is not always possible to find appropriate regulation. Because of this, problems arise with finding appropriate legal regulation within the framework of resolving a specific dispute. This concerns, in particular, cases when: there are questions of inconsistency of a law or other legal act with the Constitution of Ukraine, the norms of which do not contain provisions regulating a certain issue (for example, the law on civil service); norms that are already "outdated" and require cancellation; the court considers that the procedure for adopting a regulatory act has been violated or not followed; the court must apply the provisions of the law recognized by the Constitutional Court of Ukraine as unconstitutional, etc. [14].

Therefore, the direct effect of the Constitution of Ukraine cannot be assessed without its higher legal force, and the higher legal force can be implemented without the direct effect of the Constitution.

The direct effect of the Constitution finds its expression in two main forms - direct and indirect (through laws). At the same time, the indirect effect of constitutional norms does not mean the denial of the direct effect of such norms. That is, the direct effect of the Constitution is manifested in the direct application of constitutional norms in the current legislation by specifying them.

5. Conclusions.

The direct effect of the Constitution is a guarantee of a democratic system and a tool for overcoming legal gaps. The correct and direct application of constitutional norms, as well as legislation adopted in accordance with the provisions of the Fundamental Law of Ukraine, ensures effective protection of the inalienable rights of man and citizen. Constitutional norms that reflect the foundations of a legal social state, when properly understood and applied, can lead to the positive development of current legislation and ensure proper protection of human rights in court.

The direct effect of the Constitution is, first of all, a property, and to a certain extent, a principle of the Constitution. In this context, it is worth summarizing that the formula "direct effect of the Constitution" can be considered: firstly, as a legal property of the direct effect of the Basic Law without the need for specific legislation, which is embodied in the lawful behavior of subjects of law and has legal consequences; secondly, as one of the foundations of the constitutional order (principle of constitutional law), which determines the special place (force) of the Constitution in the system of national law and the special mechanism of its action. And constitutional law enforcement itself is a dynamic element of the direct effect of the Constitution, which ensures the effectiveness of its norms. Therefore, the doctrine of direct action creates conditions for law enforcement practice, when courts (in particular administrative courts) make decisions in specific cases, relying on constitutional norms.

References:

1. Cherniak Ye. Zastosuvannia sudamy polozhen Konstytutsii Ukrainy yak norm priamoi dii ta pravo na perehliad sudovoho rishennia za naslidkamy vstanovlennia konstytutsiinosti zakonu, inshoho pravovoho akta chy yikh okremykh polozhen yak zasib zakhystu osnovnykh prav i svobod. Ukrainskyi chasopys konstytutsiinoho prava. 2020. № 4. S. 115–126. URL: <https://www.constjournal.com/pub/4-2020/zastosuvannia-sudamy-polozhen-konstytutsii-ukrainy-yak-norm-priamoi-dii-pravo/>. [in Ukrainian]
2. Konstytutsiia Ukrainy: Zakon vid 28.06.1996 № 254k/96-VR. Baza danykh «Zakonodavstvo Ukrainy» / VR Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>. [in Ukrainian]
3. Zastosuvannia sudamy Konstytutsii Ukrainy: doktryna i praktyka / uporiad.: A.A. Yezerov ta D.S. Terletskyi. Kyiv: VAITE, 2022. 604 s. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Monografua.pdf. [in Ukrainian]
4. Selivanov A.O. Konstytutsiia. Hromadianyn. Sud. Profesiini ta suspilni pohliady. Kyiv: UAID «Rada», 2009. 560 s. [in Ukrainian]
5. Kodeks administratyvnoho sudochnstva Ukrainy: Zakon vid 06.07.2005 № 2747-IV. Baza danykh «Zakonodavstvo Ukrainy» / VR Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>. [in Ukrainian]
6. Kravchuk V. Superechnist zakonu Konstytutsii: zastosuvannia st. 7 KAS Ukrainy. Prezentatsiia. Ofits. vebсайт Verkhovnoho Sudu. URL: https://court.gov.ua/storage/portal/supreme/Kravchuk_zastos_Konstatucia.pdf. [in Ukrainian]
7. Pro zastosuvannia Konstytutsii Ukrainy pry zdiisnenni pravosuddia: postanova Verkhovnoho Sudu Ukrainy vid 01.11.1996 № 9. Baza danykh «Zakonodavstvo Ukrainy» / VR Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/v0009700-96#Text>. [in Ukrainian]
8. Postanova Velykoi Palaty Verkhovnoho Sudu vid 18.11.2020 № 4819/49/19 (p. 34). LigaZakon. URL: <https://verdictum.ligazakon.net/document/93081749>. [in Ukrainian]

9. Postanova Kasatsiinoho tsyvilnoho sudu Verkhovnoho Sudu vid 17.01.2025 u spravi № 616/458/21. Protokol.ua. URL: https://protocol.ua/ua/postanova_ktss_vp_vid_17_01_2025_roku_u_spravi_616_458_21/. [in Ukrainian]
10. Postanova Kasatsiinoho tsyvilnoho sudu Verkhovnoho Sudu vid 17.01.2025 u spravi № 343/1869/23. Protokol.ua. URL: https://protocol.ua/ru/postanova_ktss_vp_vid_17_01_2025_roku_u_spravi_343_1869_23/. [in Ukrainian]
11. Rishennia Konstytutsiinoho Sudu Ukrainy № 4-rp/2001 vid 19.04.2001 (sprava shchodo zavchasnoho spovishchennia pro myrni zibrannia). Ofits. vebсайт Konstytutsiinoho Sudu Ukrainy. URL: <https://ccu.gov.ua/docs/427>. [in Ukrainian]
12. Rishennia Konstytutsiinoho Sudu Ukrainy № 12-rp/2008 vid 25.06.2008 (sprava pro perebuвання narodnoho deputata Ukrainy u deputatskii fraktsii). Ofits. vebсайт Konstytutsiinoho Sudu Ukrainy. URL: <https://ccu.gov.ua/docs/532>. [in Ukrainian]
13. Rishennia Konstytutsiinoho Sudu Ukrainy № 6-rp/2016 vid 08.09.2016 (sprava pro zavchasne spovishchennia pro provedennia publichnykh bohosluzhin, relihiinykh obriadiv, tseremonii ta protsesii). Ofits. vebсайт Konstytutsiinoho Sudu Ukrainy. URL: <https://ccu.gov.ua/docs/1924>. [in Ukrainian]
14. Bilak M. Doktryna norm priamoi dii Konstytutsii Ukrainy: pravozastosuvannia. Yurydychna praktyka. 2021. 22 hrud. URL: <https://supreme.court.gov.ua/supreme/pres-centr/zmi/1233236/>. [in Ukrainian]

Tetyana Podorozhna,

Professor of the Department of Theory of State and Law

Lviv University of Trade and Economics,

Doctor of Law, Professor

ORCID: 0000-0003-0502-950X