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LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION IN RUSSIAN LEGAL SYSTEM

Abstract. Analyzed the relationship of the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation, as sources of law, their place in legal system.

The content of the institutes of the theory of law (Constitution, constitutionalism, legal position, source of law, judicial precedent), provisions of the Constitution of the Russian Federation, acts of the Constitutional Court of the Russian Federation, Russian legislation and the works of legal scientists using the method of comparison and synthesis are studied.

The idea that judgements of the Constitutional Court of the Russian Federation are sources of law has been criticized. An example is given of when the Constitutional Court of the Russian Federation has gone beyond the interpretation of the Constitution of the Russian Federation, creating a new legal norm.

It is concluded that the legal positions of constitutional courts as sources of law can exist without the Constitution. It is noted that the legal positions of constitutional courts is a place in which where opinions of scientists becomes obligatory.

As evidence the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation represent an inseparable unity, it is pointed out legal positions of the Court also have certain features of the Constitution as a source of law, which allows to consider them together with the Basic Law as a single source of law.

Keywords: constitution, constitutionalism, the Constitution of the Russian Federation, constitutional courts, the Constitutional Court of the Russian Federation, legal position, legal position of the Constitutional Court of the Russian Federation, source of law, judicial precedent, legal norm.

Introduction. Appearance in the 1990s of constitutional justice bodies in Russia gave the new strength to discussions on the recognition of acts of courts as sources of law. For such recognition, these acts should have the appropriate features, such as certainty, general obligation, common knowledge, and internal structuring.

Methods. The content of the constructs of the theory of law (Constitution, constitutionalism, legal position, source of law, judicial precedent), provisions of the Constitution of the Russian Federation, acts of the Constitutional Court of the Russian Federation, Russian legislation and the works of legal scientists using the method of comparison and synthesis are studied.

Results. Discussion on the role of court decisions, including interpreting the Constitution, is conducted not only in Russia. Abroad traditionally the law is viewed as an institutional normative order in which a separation is made between those who create rules of law (the legislator) and those who apply the rules of law (the courts) [1]. However, it is being noted that the text of the Constitution is important but that precedent also matters in interpreting the Constitution – and on specific points of law [2].

Turning to the Russian discussion on this issue, it should be said that the following evidences are presented as arguments in favor of recognizing acts of constitutional (statutory) courts as sources of law.

Decisions of the Constitutional Court of the Russian Federation on the recognition of the legal status as unconstitutional quite fall within the formal definition of a regulatory legal act and were included in the

number of these acts in the draft of the Federal law "On regulatory legal acts of the Russian Federation"; the term "quasi-norms" applies to the legal positions of the court, its decisions fulfill the law-making function and establish rules that actually govern the relations in society [3].

Acts of the Constitutional Court of the Russian Federation have state obligation, have a volitional nature, a strictly defined form of expression, are issued by the body of constitutional control within its competence, contain explanations of the law, as well as provisions designed to eliminate gaps in the law, and are addressed to a wide range of subjects, their role and value are not limited to one-time execution [4].

Decisions of constitutional (statutory) courts, being a special kind of sources of constitutional law of Russia, combine the properties of various sources of law and cannot be fully attributed to any of them; contain legal regulations, being at the same time individual legal acts [5].

Abroad, especially, in the USA there are other approaches, for example, J. Harrison considers, that the norms of precedent as the federal courts consist mainly of unwritten principles that are characterized as binding law but that reflect substantial judicial input, custom, and practice. Those are the hallmarks of general law [6].

Not putting in question the arguments described above, we note that scholars who recognize the decision of the constitutional court as a source of law do not take into account that it is a judicial decision, to which, in terms of design, there are special requirements. For example, according to art. 75 of the Law "On the Constitutional Court of the Russian Federation" [7] in the decision set out as a separate document, depending on the nature of the issue under consideration, contains: the name of the decision, the date and place of its adoption; the personal composition of the Court, which made the decision; necessary data about the parties; the wording of the question, the reasons and grounds for its consideration, and others.

In this regard, there are questions: whether all of the above mentioned in art. 75 of the denoted Law can be called legal norms? Is it permissible to regard as a normative part that part of the decision of the constitutional court where the positions of the applicants are disclosed? Should the source of law be the entire decision of the constitutional court as a document or only the wording of the decision?

Analysis of the structure of the decisions of the Constitutional Court of the Russian Federation allows to conclude that only legal positions expressed by it both in the formulation of the decision and outside it can have a normative character.

According to N.V. Vitruk, in legal science, the issue of the notion "legal positions of constitutional (statutory) courts" did not receive a sufficient theoretical substantiation and it is perceived more likely on an intuitive level [8]. The scientist considers legal positions as legal conclusions and representations of the court – the result of interpretation (interpretation) by the court of the spirit and letter of the Constitution and interpretation of the constitutional meaning of the provisions of regulatory acts within its competences, which remove uncertainty and serve as the legal basis for the final acts of the court [9].

From the point of view of G.A. Gadzhiev, the legal position of the court is only a fragment of the motivation part of the final decision of this body, which is connected with the final conclusions of the Court, and represents a legal understanding of the constitutional norm, common to the statutory majority of judges, by its nature close to ratio decidendi, meaning in English case law the essence of decision, the decisive argument [10]. According to L.V. Lazarev, the legal position is a system of legal arguments expressing the legal consciousness of the constitutional principle, norm and proper constitutional content of the contested legal provision [11].

V.O. Luchin, O.N. Doronina and M.G. Moisenko regard that the legal position of the court is not only the final conclusion on the compliance or non-compliance of the norms of the considered law with the Constitution, but also a system of arguments driven by this body in support of the decision [12].

These scholars note that the legal positions of constitutional courts have many features inherent in the sources of law. The most significant is that they reflect the political will, because they arise as an act of constitutional law of a state proxy to express this will in the form and parameters prescribed by law; have an obligatory character and possess the quality of a regulator of public relations certain type; they also possess specific internal properties, since they serve as a regulatory framework in the legal system, and also serve as a guide in law-making and law enforcement [13].

B.A. Strashun divides legal positions into non-norms and containing constitutional norms. He refers to the first category those positions that constitute the interpretation of the Constitution and are contained

in the motivation part of the decisions of the Constitutional Court of the Russian Federation, to the second - the legal positions expressed in court decisions on the official interpretation of the Constitution and on the resolution of competence disputes [14].

According to B.S. Ebzeev, decisions of the Constitutional Court of the Russian Federation act as a way of overcoming uncertainty in understanding the provisions of the Constitution, clarifying its objective meaning and identifying the positive legal principles contained in it; therewith, the court is deprived of discretion in the sense that the limits of such discretion are conditioned by the obligation to maintain the Constitution and the inadmissibility of its violation or amendment, except for the silent "transformation" of the Constitution stated by the court, i.e. its adaptation to the objective realities of social development [15].

I.S. Basten considers legal positions as part of the decision of the constitutional justice body, which contains a special type of normalization, serving as a model for resolving issues that arise in the future, in which the conclusions made by the judges of the constitutional (statutory) courts when considering a particular case are supported by certain reasons [5].

Discussion. Some scientists believe that the courts can only interpret the law without creating new legal norms. It is impossible to agree with this statement for the following reasons.

Firstly, in practice, the line between the interpretation of the law and the creation of a new legal norm is very thin. In theory, the interpretation should only clarify the meaning of the norm, but this is not always the case because of the imperfection of the legislation. As an example of the creation of a new legal norm by the Constitutional Court of the Russian Federation, the decision [16] is usually given, in which the Court actually established a new, not stipulated by the Basic Law, version of the regulatory legal act - the Law of the Russian Federation on the Amendment of the Constitution of the Russian Federation.

According to E. Feterisin modern view, the judge is no longer considered as the «mouth of the law» who automatically deduces the decision from the general rule, but he establishes the meaning of the legal rule in the context of the specific case. In this conception, legal rules do not have a context-independent meaning, but the judge must decide in the individual case what the exact meaning of the legal rule is [17]. There is another point of view, for example, N. Katyalargues that Congress, not the Court, is often best situated to make the judgments necessary to create the Constitution of relevance to Americans today [18].

Secondly, legal positions of courts, which usually cite as examples of "judicial precedents" in Russian legal science, as a rule, cannot exist without a corresponding regulatory legal act, explaining its meaning, filling legal lacuna or correcting the content. In the event that the content of act is changed or it is repealed, decision of the judicial authority revokes its force. It should also be noted that the content of normative act, considered without taking into account decisions of judicial authorities, will be inaccurate and incomplete.

For example, in art. 1 of the Constitution of the Russian Federation, it is established that the Russian Federation is a democratic state. This provision is the norm-definition, and its content can be disclosed through an explanation of what is democracy. There are various approaches to the theory of democracy in different states: for example, direct democracy is more diffused in Switzerland and referendums are often held, and in the USA plebiscites are assigned less because they are believed to undermine the authority of the legislative power established in the Constitution.

In some appeals to the Constitutional Court of the Russian Federation, the applicants refer to the fact that, in accordance with the Constitution, Russia is a democratic state, but participants in constitutional legal proceedings often have an understanding of the meaning of democracy. Therefore, the Constitutional Court of the Russian Federation is forced in its decisions to disclose the requirements for legal regulation in a democratic state and indicated the following:

– maintaining the principle of keeping citizens' confidence in the law and actions of the state, which presupposes the preservation of reasonable stability of legal regulation and the inadmissibility of making arbitrary changes to the existing system of norms, as well as providing citizens with the opportunity, if necessary, in particular by establishing temporary regulation, during a reasonable transitional period to adapt to changes [19];

– compliance with the requirement of justice when applying responsibility for violation [20];

– formation of local government bodies through free elections [21];

– proper enforcing obligations made directly to the public [22].

In the Constitution of the Russian Federation and the laws, there are no norms to establish responsibilities of legislators to involve into law the legal positions created by the Court outside of a operative part of decision. In science, there is a discussion about the degree of their commitment [8, 23]. But in any case, the legislator understands that if it ignores legal positions, then there is a high probability that the relevant legal acts will be repealed by the Court.

It should also be noted that the legal positions of constitutional courts are the place where opinions of scientists becomes obligatory. For example, the Constitutional Court of the Russian Federation established application of legal principles is mandatory [24].

In conclusion, it should be noted the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation are an inseparable unity. Evidence of this is that legal positions have the hallmarks of the Constitution (consolidation the main principles of the social and state system; the source of the law of all branches of Russian law), which allows considering them together with the Basic Law as a single source of law.

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РЕСЕЙ ҚҰҚЫҚТЫҚ ЖҮЙЕСІНДЕГІ РЕСЕЙ КОНСТИТУЦИЯЛЫҚ СОТЫНЫҢ ҚҰҚЫҚТЫҚ ҰСТАНЫМДАРЫ

Аннотация. Зерттеудің мақсаты – РФ Конституциясы мен Ресей Конституциялық Сотының құқықтық ұстанымдарының құқықтық жүйедегі құқық көздері ретінде орақатынасын талдау болып табылады.

Салыстыру және синтез әдісін қолдана отырып, құқық теориясының конструкторларының мазмұны (конституция, конституционализм, құқықтық ұстаным, құқық көзі, сот прецеденті), РФ Конституциясының ережелері, РФ Конституциялық Сотының актілері, Ресей заңнамасы және ғалым-заңгерлердің еңбектері зерттелді.

РФ Конституциялық сотының шешімдері құқық көзі болып табылатындығы туралы идея сынға алынды. РФ Конституциялық соты РФ Конституциясын түсіндіру шегінен шығып, жаңа құқықтық норманы жасап шыққан мысал келтірілген.

Конституциялық соттардың құқықтық ұстанымдары құқық көзі ретінде Конституциясыз өмір сүре алмайды деген қорытынды жасалды. Конституциялық соттардың құқықтық ұстанымдары – бұл құқық және мемлекет теориясының, конституциялық құқық ғылымының жекелеген ережелері нормативтік, жалпыға міндетті сипатқа ие болатын орын деп көрсетіледі.

РФ Конституциясы мен Ресей Конституциялық Сотының құқықтық ұстанымдары ажырамайтын бірлікті білдіреді деген дәлел ретінде, Конституцияның жекелеген белгілеріне құқық көзі ретінде Конституциялық Соттың құқықтық ұстанымдары да ие екендігі көрсетіледі, бұл оларды негізгі заңмен бірге құқықтың бірыңғай көзі ретінде қарастыруға мүмкіндік береді.

Түйін сөздер: конституция, конституционализм, Ресей Конституциясы, конституциялық соттар, Ресейдің конституциялық соты, құқықтық ұстаным, РФ Конституциялық Сотының құқықтық ұстанымы, құқық көзі, сот прецеденті, құқықтық норма.

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ПРАВОВЫЕ ПОЗИЦИИ КОНСТИТУЦИОННОГО СУДА РОССИЙСКОЙ ФЕДЕРАЦИИ В РОССИЙСКОЙ ПРАВОВОЙ СИСТЕМЕ

Аннотация. Целью исследования является анализ соотношения Конституции РФ и правовых позиций Конституционного Суда России, как источников права, их места в правовой системе.

С применением метода сравнения и синтеза изучены институты теории права (конституция, конституционализм, правовая позиция, источник права, судебный прецедент), положений Конституции РФ, актов Конституционного Суда РФ, российского законодательства и трудов ученых-юристов.

Подвергнута критике идея о том, что решения Конституционного Суда РФ являются источниками права. Приведен пример, когда Конституционный Суд РФ вышел за пределы толкования Конституции РФ, создав новую правовую норму.

Сделан вывод, что правовые позиции конституционных судов как источники права не могут существовать без Конституции. Отмечается, что правовые позиции конституционных судов – это место, в котором отдельные положения теории права и государства, науки конституционного права приобретают нормативный, общеобязательный характер.

В качестве доказательства того, что Конституция РФ и правовые позиции Конституционного Суда России представляют неразрывное единство, указывается на то, что отдельными признаками Конституции как источника права обладают и правовые позиции Конституционного Суда, что позволяет рассматривать их вместе с Основным законом как единый источник права.

Ключевые слова: конституция, конституционализм, Конституция России, конституционные суды, Конституционный Суд России, правовая позиция, правовая позиция Конституционного Суда РФ, источник права, судебный прецедент, правовая норма.

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