

THE PARTICULARS OF THE CONSTITUTIONAL LITIGATION PROCESS IN THE REPUBLIC OF MOLDOVA

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Abstract

This study is generally dedicated to researching the purpose and functions of constitutional litigation, and in particular, it is dedicated to researching the purpose and functions of the constitutional litigation process within the rule of law. In the condition of the existence of a relevant legal framework, the doctrinal concepts relating to the purpose and functions of the constitutional litigation process contribute to drawing a conclusion, according to which: the constitutional litigation is identified with the procedures for the control of constitutionality, by way of action or by way of exception, previously or after the entry into force of the law.

Regarding the purpose of the constitutional litigation process within a state of law, the author notes that it directly aims to guarantee the supremacy of the Constitution, by 1) ensuring the realization of the principle of separation of state power into legislative, executive, and judicial power; 2) guaranteeing the state's responsibility towards the citizen and the citizen towards the state.

Regarding the functions of the constitutional litigation process within a state of law, the author finds that they directly aim at the interpretation of the Constitution based on the principle of legality and publicity; control of the constitutionality in general of national and international normative acts; resolving the exceptions of unconstitutionality of legal acts; legal protection of human and citizen rights and freedoms, etc.

Keywords: Constitution, Constitutional Court, Constitutional litigation, Control of the constitutionality of laws, Legal conflict of a constitutional nature.

INTRODUCTION

The research of the constitutional dispute at the contemporary stage turns from a national research problem into an international research problem. This is confirmed by the appearance of the European Commission for Democracy by Law, also called the Venice Commission of the Council of Europe, which institutionalizes the comparative scientific research of constitutional litigation [1].

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Having a jurisdictional aspect, constitutional litigation gives the constitutional litigation process an objective character that contributes to the direct applicability of the Constitution. In this context, the phenomenon of building a framework of stability that escapes the inherent oscillations of the governance process [2] can be noted. Either way, this highlights the fact that a constitutionality judge in the trial is a requirement of the rule of law as is the legality judge.

Respectively, in what follows, we propose to analyse the concepts supported and fought by different theoreticians in the specialized doctrine, especially regarding the purpose and functions of the constitutional litigation process. Afterwards, we will present and argue our own opinion on the subject under analysis based on the scientific studies of local and foreign doctrinaires, as well as on the legislation in force in the field. The results of this research will be expected, as we will use the most important and appropriate research methods, including the logical method, the comparative method, and the systemic method, etc.

MATERIALS AND METHODS

Among the methods of socio-human sciences, those that become complementary, in the present paper, are found: the analysis of normative acts; comparative method; observation, and historical examination. Research methods such as systematization and generalization also have an impact.

RESULTS

In order to achieve the purpose of the present study, we propose to outline the content of the notion of constitutional litigation and the process of constitutional litigation, which in doctrine has been and continues to be addressed, and as the case may be, interpreted under different aspects.

The emergence and functioning of the institution of constitutionality control in the Republic of Moldova through a special and specialized body called the Constitutional Court contributed to the increasingly frequent use of the term constitutional litigation, which in turn can be understood in several senses:

- including any legal conflict of a constitutional nature: electoral litigation; conflicts between authorities (litigation of the horizontal separation of powers); conflicts between the federation and the member states (the vertical separation of powers dispute); the litigation of fundamental rights and freedoms [3].

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- identifying with the constitutionality control procedures, by way of action or by way of exception, before or after the entry into force of the law [4].
- including all litigation on a challenge to the constitutionality of acts subordinate to the Constitution, as well as the procedures and techniques aimed at resolving these challenges [5].

Researcher B. Selejan-Guțan approaches the role and importance of the constitutional contentious process, considering that within this process there is a set of rules, institutions, and procedures in which the resolution by the constitutional jurisdiction authority, through binding decisions, of conflicts with constitutional character [6].

In the opinion of local doctrinaires Gh. Costachi and P. Răilean, constitutional justice directly concerns the process of constitutional litigation as it involves the jurisdictional activity carried out by the Constitutional Court (the only authority with constitutional jurisdiction). In turn, this activity is aimed at: ensuring the protection of constitutional legality; assessing the constitutionality of laws and other normative-legal acts; the resolution of constitutional conflicts, etc. [7].

Accordingly, it follows that through the constitutional litigation process, the Constitutional Court centrally exercises a special and specialized control regarding the constitutionality of the law, in accordance with its other attributions. Either way, the domestic and international specialized doctrine proves to us in a multitude of investigations that the purpose of the constitutional litigation process is to guarantee the supremacy of the Constitution. More than that, through compliance with the constitutional litigation process, the rule of law is strengthened and the constitutional control carried out by the Constitutional Court is substantiated.

In this context, we note that achieving the goal of the constitutional litigation process depends on the powers and duties of the Constitutional Court. However, this is a mandatory subject that:

- primarily participates in the constitutional litigation process;
- secondly, it has a series of control functions, as well as powers for the resolution of constitutional disputes that arise between the subjects of constitutional law;
- thirdly, it performs the control of constitutionality.

Within the present investigation, focusing directly on the role and purpose of the constitutional contentious process, we determined that it is determined by the following moments: the independence of the constitutional jurisdiction from the three branches of power; its competence to ensure the realization of the principle of

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separation of powers in the state; the constitutionality control exercised over normative acts and procedures for exercising power; the protection of human rights and fundamental freedoms against abuses of power [8]. This follows directly from the legal provisions of Article 134 paragraph (3) of the Constitution of the Republic of Moldova [12], article 1 paragraph (3) of the Law on the Constitutional Court [9] and Article 2 paragraph (2) from the Code of Constitutional Jurisdiction [10], the Constitutional Court:

- a) guarantees the supremacy of the Constitution;
- b) ensures the implementation of the principle of separation of state power into legislative power, executive power and judicial power;
- c) guarantees the responsibility of the state towards the citizen and the citizen towards the state.

The problem with this regulation actually lies in the idea that the legislator does not define and identify according to some objective criteria the purpose and tasks of both the Constitutional Court and the constitutional litigation process.

In the local doctrine, there are also opinions according to which [11] the purpose assumes a long-term, strategic perspective of the functioning of the Constitutional Court, which is realized through certain tasks. The realization of these tasks presupposes as a whole the assurance and protection of the supremacy of the Constitution within the framework of the constitutional litigation process. From this perspective, we adhere to the opinion of local researchers [12], who claim that the major purpose of the Constitutional Court consists in a) ensuring and protecting constitutional legality; b) respecting and applying the principle of constitutionality.

Next, through the purpose of the constitutional litigation process, we will discuss its functions. As follows, the functions of the constitutional contentious process, within a state of law, depend directly on the following circumstances: a) the operation of the sole authority of constitutional jurisdiction; b) exercising the powers and powers of the Constitutional Courts, established by virtue of the Constitution and other laws.

Moreover, within the constitutional contentious process, the Constitutional Courts perform several functions, among which [13]:

- 1) the interpretation of the Constitution. This function implies a form of legal activity, oriented towards the implementation of the Constitution, the consolidation of its authority, the protection of constitutional norms and the prevention of constitutional crimes [14]. The purpose of this function is to provide an authentic interpretation that contributes to the stability of constitutional jurisprudence. At the same time, through

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this function, the Constitutional Court establishes the powers of the public power bodies.

2) the control of constitutionality. This function involves verifying the correspondence with the Constitution of laws and other normative acts, international treaties, decisions, and the activity of dignitaries, persons with responsible positions, and public administration bodies, including judicial bodies. The purpose of this function is to restore constitutionality and constitutional order [15].

3) establishing the competence of public authorities;

4) protection of human and citizen rights and freedoms. This function involves the examination of notifications addressed to the Constitutional Court regarding the verification of the constitutionality of laws and other normative acts. The purpose of this function is to ensure and legally protect the rights and freedoms of man and citizen in the context of strengthening the rule of law.

With reference to the previously mentioned, we establish that in the system of separation of powers, the Constitutional Court is the only subject of power, intended to find the optimal balance between public and private interest, to defend the individual, society and the state against unfounded attacks, to maintain a state of protection and security of the constitutional status of everyone and every subject of social and legal relations. Either way, such a moment arises from the very constitutional competence of the Constitutional Court as the only body vested with the right to interpret the Constitution and to assess based on it the quality of the practice of legal regulation and practical application of legal norms [16].

Considering the complexity and nature of the duties of the Constitutional Court, as well as the procedures according to which it carries out these duties, it can be considered a political-jurisdictional public authority. Respectively, the particular characteristics of the Constitutional Court are imprinted in the characteristics of the constitutional contentious process, since:

- The Constitutional Court is not a power in the state, nor does it hold any of the functions of the legislative, executive and judicial powers;
- As a public authority regulated by the Constitution in a distinct title, the Court exercises the role of guarantor of the supremacy of the Constitution;
- It is a public authority that supports the proper functioning of public powers within the constitutional relations of separation, balance, collaboration and mutual control;
- The Constitutional Court is independent of any other public authority and is subject only to the Constitution and its organic law;

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- The political character of the Constitutional Court results, first of all, from the fact of appointing the judges, because the political authorities, the Parliament, are involved in their appointment.
- The jurisdictional character also determines the principles of the Court's organization and operation, namely the independence and immovability of the judges, and the procedures by which the Court's attributions are carried out have, for the most part, judicial procedural features.

CONCLUSIONS

The Constitutional Court represents that body that carries out constitutional jurisdiction, with reference to the control of the constitutionality of normative acts and the annulment of legal norms that contravene the Constitution, through the interpretation of the Constitution.

Finally, the previously mentioned come to highlight that the constitutional contentious process presents the following features:

- 1) being subject to genuine jurisdiction, taking into account its purpose;
- 2) being carried out in accordance with some own procedural rules, written in the Constitution, laws and regulations determined by the constitutional dispute;
- 3) being carried out and managed by a unique, special and specialized body, which has a monopoly on constitutional litigation.

Respectively, the decisions for the control of constitutionality are executory and final, as they attract the nullity of the normative act or its provision declared unconstitutional. Regarding the decisions adopted in the framework of the constitutional litigation process, they still have the character of a recommendation to bring the respective act in accordance with the Constitution since its recipients are the state authorities that drafted and/or adopted the act subject to constitutionality control [17].

Accordingly, ensuring and guaranteeing constitutional legality determines the purpose of the constitutional litigation process within a state of law, which directly aims to guarantee the supremacy of the Constitution, by ensuring the realization of the principle of separation of state power into legislative power, executive power and judicial power; guaranteeing the state's responsibility towards the citizen and the citizen towards the state. However, the purpose and functions of the constitutional contentious process directly depend on the application of principles, such as independence, immovability, collegiality, legality, and publicity.

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