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Abstract

CONSTITUTIONAL JUSTICE AND POLITICS

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"THE POLITICIZATION OF THE CONSTITUTIONAL COURTS: CAUSES AND CONSEQUENCES"

(THESES) There is no sense to discuss the lack or minor significance of politicization, because there wouldn't be very controversial "political questions doctrine" without it. Even Hans Kelsen saw political functions in law. He admitted that the basis of any constitution is a "political conception" and constitutions have political character. Representative democracy in general is characterized by indissoluble connection of law and policy. The western view on politicization of constitutional control problem consists in admitting of a political component in constitutional control. Some researchers call the decisions of constitutional control organs "manipulative". Thus, they stress on a huge influence of these organs in politics,

their political nature. Finally, the constitution itself, as an object of guarantees, is a political document. Analysis of the practice of constitutional control shows a tendency to a politicization in a negative context. But some researchers believe that the politicization of constitutional control is a virtue, because it helps to provide consensual services within separation of powers.

Constitutional control as an integral part of the political sphere is a fact that has to be taken calmly regardless of our attitude to politics. French constitutionalists, having a significant experience in this field and taking into account the Constitutional council practice, fixed this status long time ago. In fact, for consideration: constitution, vertical and horizontal construction of public authority, conflicts between levels and elements of power, electoral procedures control, previous control are the concentrated demonstration of politics. Even the way of formation of such organs has a political shade. "... though the work of constitutional courts has to be independent and free from political influence, it can't

be denied that political factors have their own weight during assignment of constitutional judges." (Venice commission. Conclusion# 37712006). Also, the amount and specificity of powers of constitutional control body doesn't matter - the minimal level of involvement in the political field is provided by nature of such bodies. We can discuss only a measure of involvement. The fact, that constitutional control body tends to politicization is not a flaw but the attribute of this body and institute in general. Existing in political field, it's impossible to stay in "white gloves", politics will influence motives and decisions of this body.

One of the reasons of politicization of constitutional control bodies is their installation into the "check and balances" system and power division. A constitutional control body, if it is not an independent arbiter, tends harsh politicization in a triangle "parliament - government - the head of state". And this is the confirmation that it is impossible to be a part of a political system and not to L.D., Judge of the Constitutional Court of Ukraine

Ihor Slidenko be politicized. But, politicizing, the constitutional control body converts into Rattenfänger von Hameln, not leading into a low, but leaving a law field, putting into a <larger the law and the relations, regulated by this body. " ... the better the doctor is, the more useless is medicine he knows" - using this Benjamin Franklin quote, we can say that the constitutional control body has the possibility to evade politically uncomfortable hearings. There are doctrines like "political question" for it.

There are certain levels of political component in constitutional control body activities. The first level is connected with the positioning of such bodies. The main argument of this level is belonging of constitutional control bodies to a state mechanism that realizes public authority, which by means has a political character.

This argument is not the basic one for constitutional control bodies as it is generic characteristics of all state bodies without exceptions. so there is certain controversy between declared "out of politics" of constitutional control bodies and their generic nature.

The second level is a political character of competence and powers of constitutional control bodies. Having a specific character, this level is more important for the understanding of political component in the nature of constitutional control bodies. The main problem is how to solve political questions with the help of law. Is it possible without doing any harm to law? After all, law is politicizing and politics regulates by law. So we get the decision, which is neither strictly political nor law. But it suppose to be strictly law one.

The third level is the political nature of consideration of such bodies. It is immanently connected with political constitution. The best example is any constitutional activity of constitutional control body. There are also law elements of constitutional control nature, that can't exist without political expediency.

Edwin Meese III determined the main point of constitutional control functioning in area "politics - law". This body must evaluate political actions on the assumption of principles, not vice versa. We can say - not must but is able to evaluate, because it is not always advisable to do so only due to politicization. The main task of constitutional control is to decide how to realize such evaluation in necessary cases and how to escape the evaluation when it can worsen the situation.

We also have a sad fact: lawmaker's provisions about depoliticization of constitutional control bodies mostly don't work. What can prevent a member of constitutional control body in Ukraine from following the political course of the political party, that recommended him in the parliament? The constitutional court itself decides which case is political and which is not, so all the declarations about non-political nature of constitutional control are theoretical.

But external factors of influence on constitutional control body are also very important in case of its political prejudgment. For the effective depoliticization, the constitutional control bodies should be protected from external influence and provided by enough autonomy. But this autonomy is hard to realize because of the existing order of forming such body in Ukraine.

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These are the examples of external politicization. But there can also be an internal politicization, when a constitutional control body becomes an «independent player». In this case, forming its own position or using political precedent, but respecting the interests of law, such body realizes one of its main functions - mediation between law and politics.

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