

Garbuz Y.

U.D.C.: 342.5 (477)

*leading specialist of department on questions
of activity of public and state administration authorities
of The department of constitutional and administrative law of Ministry of justice of Ukraine*

**FEATURES OF SUBORDINATE NORMATIVE LEGAL ACTS
OF HIGHER PUBLIC AUTHORITIES OF UKRAINE IN THE SYSTEM
OF SOURCES OF NATIONAL CONSTITUTIONAL RIGHT
(to raising of problem)**

Modern stage of creation of the state and lawmaking in Ukraine characterized by conducting of constitutional reform, the purpose of which is foremost an improvement of normative legal mechanisms of adjusting of constitutional legal relationships in society and state, expansion of circle of subjects of constitutional lawmaking and search of new legal forms of fixing of political will and legitimate interests of these subjects, that resulted in rethinking of essence and maintenance of sources of modern constitutional right of Ukraine and their system, and also exposure of new sources which would be instrumental in the improvement of mechanisms of the constitutionally legal adjusting by ukrainian legists in nowadays.

For today these categories became the article of the detailed constitutionally legal researches (O. Vasilchenko, O. Nazarenko V. Pogorilko, O. Savyaka, V. Fedorenko, V. Coklana, etc.). Together with that, some types of sources of constitutional right do not find the proper attention of legists. In the first place, it's about subordinate normative legal acts as sources of modern constitutional right of Ukraine.

Development and improvement of domestic legislation, as an inalienable constituent of genesis of Ukrainian constitutionalism and modern constitutional lawmaking and law enforcement activity, unavoidable predetermines attention to legal nature of all particular branch sources of right. Thus, it is impossible to ignore such obvious tendency as noticeable increase of

amount of normative legal acts, the greater part of which are exactly subordinate normative legal acts. It is determined foremost that the proper legal documents form the special block of legal acts, which probed little, but plays substantial role in adjusting of relations in society. Quite a bit from them have a direct relation to the constitutional right and touch the problems of organization of state power, rights, freedoms and duties of citizens, electoral system, political system, etc.

In addition, it follows to take into account the changes of international law and order, world globalization processes, which require the revision of conception of domination and supremacy of law, acceptance of multiplicity of sources of right, claim of universal values, update of withstand look on the sources of right, their consideration as the system linked elements. For the modern Ukrainian state are characteristic: active update of normative part of the legal system accordant by the European legal standards; diversify legal facilities, in particular sources of right; deformalization of the legal system [1].

At the same time, sharp problem is acceptance of hierarchicalness of such sources and settlement of legal collisions which arise up in connection with realization of subordinate constitutional normative legal acts [2]. Development of the system of normative legal acts of Ukraine has certain extent unsystematic, and sometimes chaotic character, not single are cases of exceeding of state power of the lawmaking plenary pow-

ers, interference, organs in a sphere of exceptionally legislative adjusting of public relations, there is disparity of form of acts of maintenance, and also disturbing their edition. Certainly, that requires strengthening of attention to the legal and financial aspects of the system of subordinate normative legal acts in the field of constitutional right.

Subordinate normative acts are included in the general system of sources of right of Ukraine, are the transmitters of basic properties and express of basic principles that inherent for this system. Principle of supremacy of law plays a determining role in the legal system of the state, in activity of all legal subjects, first of all, public organs and public servants. This principle means that a law has the greatest legal force in relation to all other normative legal acts and legal sources, set right by the state [3].

Next to principle of supremacy of law one of major properties is a severe hierarchy of sources of right. Collateral subordination of normative acts is related to it provides their unity, it is one of terms of realization of legality.

As known, the hierarchy of sources of right means such their system after which subordinate sources occupy inferior position in relation to higher, thus the first can not contradict the last, can not change them, deprive legal force. The place of source of right in this system, as a rule, answers a place, which occupies in the system the subjects of lawmaking subject which creates this source [4].

The idea of hierarchical construction of the system of sources of right matters not only for expression of their subordination. The hierarchicalness is meant internal intercommunication, determines the loss of action of whole groups of lower acts in the case of declension (or changes) of higher act. In addition, establishment of accordance can be shown in the partial update of lower sources [5].

Seen, that subordinate sources of constitutional right of Ukraine are normative legal acts, which express will of the Ukrainian people and

policy of the state, does not conflict with Constitution of Ukraine and laws of Ukraine and develop their position. It is decrees and other normative legal acts of Verkhovna Rada of Ukraine; decrees and orders of President of Ukraine; decrees and orders of Cabinet of Ministers of Ukraine and normative legal acts of other central organs of executive power; decrees of the Central election committee and territorial election committees; acts of reacting of Authorized on human rights of Verkhovna Rada of Ukraine; decrees and conclusions of Constitutional Court of Ukraine; normative legal acts of former USSR and Ukraine. To the local sources of constitutional right of Ukraine belong the normative legal acts of Autonomous Republic, in particular, Crimea and normative legal acts of other subjects of local self-government [6].

These subordinate sources of constitutional right co-operate between itself, forming the certain organic system in basis of which lies political will and legitimate interests of the proper subjects of constitutional lawmaking.

Normative acts of President of Ukraine occupy an important place among the subordinate sources of constitutional right of Ukraine. Authorities for edition of legal acts are a mean without which it is difficult to treat, as it's not only enables to free a legislation from the detailed adjusting, which acquires all greater sizes in the modern state, but also provides this adjusting the rapid reacting on changing of certain circumstances of state political life [7].

In accordance with part 3 of item 106 of Constitution of Ukraine, President of Ukraine on basis and on implementation of Constitution and laws of Ukraine gives out decrees and orders which are obligatory to implementation on territory of Ukraine. That realization of constitutional plenary powers of President of Ukraine, fastened in part 1 of item 106 of Constitution of Ukraine, foresees realization them of rule-making functions. Besides, in obedience to part 1 item 93 of Basic Law, a country's leader is a subject of initiation of bill.

The example of act of President which can be attributed to the sources of national constitutional right is Decree of President of Ukraine "About near-term measures in relation to providing of realization and guaranteing of constitutional right on an address to the organs of state power and organs of local self-government" from February, 7, 2008 № 109, directed on creation of the proper legal mechanisms of realization and guaranteing of constitutional right for citizens on an appeal, fastened in item 40 of Basic Law.

As a variety of subordinate normative acts the decrees of President of Ukraine have higher legal force in relation to decisions and orders of Cabinet Ukraine. In part 3 of item 116 of Constitution of Ukraine is set that Cabinet of Ministers in the activity follows Constitution and laws of Ukraine, acts of President of Ukraine. That, resulted constitutional position sets the place of normatively legal acts of country's leader in the hierarchy of subordinate normative legal acts.

Also, President of Ukraine is provided with a discrete right to stop operate acts of Cabinet of Ministers of Ukraine from reasons of their disparity to Basic Law with a simultaneous address to Constitutional Court of Ukraine in relation to their constitutionality (paragraph 15 of part 1 of item 106). About the important place of decrees of President in the system of subordinate normative legal acts testifies and position of Constitution of Ukraine (part 7 of item 107) that the decisions of National Security and Defense Council of Ukraine are entered in an action the decrees of President of Ukraine.

Special and specific in legal sense acts of President is his message to the people, annual and extraordinary messages in Verkhovna Rada of Ukraine about internal and external position of Ukraine (paragraph 2 of part 1 of item 106). The noted acts do not have clear normative nature, but their programmatic influence on constitutional lawmaking and law enforcement activity is implicit.

In accordance with paragraph 30 of part 1 of item 106 of Constitution, President also has a right for a veto in relation to the laws (except for laws on making alteration in Constitution of Ukraine) accepted by parliament with the next returning them on the repeated consideration of Verkhovna Rada. Basic Law, unfortunately, did not fix, what normative legal act such returning of law can be designed by a country's leader on the repeated consideration. Practice of application of presidential veto shows that by a legal form last the letters-suggestions of President come forward to Verkhovna Rada with the ground of necessity of change of those or other accepted law provisions.

The constitution of Ukraine (part 4 of item 106) foresees the necessity of fastening of some acts of President of Ukraine by the signatures of Prime Minister of Ukraine and minister, accountable for an act and his implementation. Such procedure in a constitutional right is named countersign. However, institute of consignee rationed in part 4 of item 106 of Constitution of Ukraine, by virtue of his imperfection, so did not become firmly established in modern constitutional practice of Ukraine.

Constitution of Ukraine in part 2 of item 84 applies to all acts which legalize political will of Verkhovna Rada of Ukraine unifying term of "decision of Verkhovna Rada of Ukraine". In paragraph 5 of explain part of Decision of Constitutional Court of Ukraine № 16-пр/2003 from October, 14, 2003 (case about direction of query to President of Ukraine), set that under the term of "decision" of Verkhovna Rada of Ukraine it is needed to understand the results of will of parliament of Ukraine on questions, to attributed to his jurisdiction.

As known, political will of Verkhovna Rada of Ukraine is the source of not only laws of Ukraine but also, in accordance with the item 91 of Constitution of Ukraine, decisions and other acts of parliament. That next to legislative acts, parliament accepts subordinate acts. It follows to consider the subordinate sources of constitutional right only those acts of Verkhovna Rada, which

regulate public relations and which are the article of constitutional right.

The most widespread subordinate normative legal acts of Verkhovna Rada of Ukraine are its decisions. The decisions of Verkhovna Rada of Ukraine are accepted on the plenary meetings by most voices of deputies of Ukraine on questions taken by Constitution of Ukraine to knowing of parliament. For example, Decision of Verkhovna Rada of Ukraine from January, 28, 1992 № 2067-XII "About the State flag of Ukraine".

The important constituent of the system of modern sources of constitutional right of Ukraine are decisions of Cabinet of Ministers of Ukraine, and on occasion, normative legal acts of central organs of executive power, which are regulate political and other major public relations in the sphere of constitutional right. This group of subordinate normative legal acts occupies an insignificant place in the system of subordinate sources of constitutional right, but during constitutional reform, in particular, the change of forming of Cabinet of Ministers of Ukraine, his accountability and under control, increase of term of his references, in the sphere of executive power grounds to forecast the increase of acts of government, which will present political will of this important subject of rule-making in a sphere of constitutional right.

The example of subordinate normative legal act of Government in the sphere of constitutional right is Decision of Cabinet of Ministers of Ukraine from February, 23, 2006 № 207 "About direction and co-ordination of activity of central organs of executive power through the proper ministers". Next to the relations of state administration this Decision rationed and constitutionally legal status of ministries which as a result of constitutionally legal reform 2004-2008 became the valuable subjects of political and legal relations. Consequently, on our persuasion, the mode of "sub legality" of normatively legal acts acquires specific character in relation to the decisions of Cabinet of Ministers of Ukraine and means such their property which characterizes edition of the

real acts not only on basis and on implementation of Constitution and laws of Ukraine, but must answer other acts which have higher legal force: to the decisions of Verkhovna Rada of Ukraine and acts of President of Ukraine.

Thus, subordinate normative legal acts, in the first place, the acts of Verkhovna Rada of Ukraine, President of Ukraine and Cabinet of Ministers of Ukraine, occupy an important place in the system of sources of modern constitutional right of Ukraine and play substantial role in national creation of the state and lawmaking. At the same time, integral and conception of subordinate normative legal acts is completed in the system of sources of constitutional right of Ukraine yet expects the researcher.

Literature:

1. Луць Л. А. Типологізація сучасних правових систем світу. Відкрита лекція - К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2007. - С. 13-14.
2. Цюпан В. І. Джерела конституційного права України: поняття, види і структура // Держава і право. Зб. наук. праць. - Вип. 29. - К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2005. - С. 96.
3. Міжнародна поліцейська енциклопедія У 10 т. / Відп. ред. Ю. І. Рижмаренко, Я. Ю. Кондратьєв, В.Я. Тацій, Ю. С. Шемшученко. - К.: Концерн "Видавничий дім "Ін Юре", 2003. - С. 61-62.
4. Мурашин О. Г. Підзаконна нормотворчість у процесі конституційної реформи // Актуальні проблеми конституційного права та державотворення Зб. наук. праць / За заг. ред. В. М. Спуйка. - Хмельницький Вид-во Хмельницький університет управління та права, 2008. - С. 35.
5. Пархоменко Н. В. Джерела права: проблеми теорії та методології. Монографія - К.: ТОВ "Видавництво "Юридична думка", 2008. - С. 194.
6. Конституційне право України. Академічний курс: Підруч.: У 2 т. - Т1 / За ред. В. Ф. Погоріша. - К.: ТОВ "Видавництво "Юридична думка", 2006. - С. 328.
7. Лессе К. Основы конституционного права ФРГ. - М., 1981. - С. 255.