

# **SUBORDINATE RELATIONSHIP BETWEEN CIVIL AND CONSTITUTIONAL LEGAL PROCEEDINGS IN THE COUNTRIES WITH AN AUTONOMOUS BODY OF CONSTITUTIONAL CONTROL**

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## **ABSTRACT**

*Description: Globalization, migration, permanent reforms are integral attributes of the countries in transition, which are also negative prerequisites for human rights violations. An additional problem is an instability and unpredictability of legislation in such a period, constant variability of the expectations of the population, the diametrical goals of society and the government. Therefore, by applying to a court, the plaintiff cannot always get an objective protection of his fundamental right within only one type of legal proceedings. The desire to protect violated subjective rights in full forms the need for initiatives not only in civil proceedings, but also in constitutional ones. The transition from one trial to another one can be consistent (the second one after the completion of the first one), or concurrent in case of an initiative of constitutional review by the courts. The purpose of the article is to disclose the relationship between civil and constitutional legal proceedings as open systems with the presentation of their mutual influence on the order, mechanism and methods of protecting subjective civil rights. The methodology of the doctrine of judicial law has served as the basis for the formation of objective relations between civil and constitutional litigation. The integrative method has been used to prove consistency in the analysis of constitutional-legal phenomena, and to verify the data integrity obtained in this process. The imperative method has been used to emphasize the subordinate relationship between the studied judicial processes. The results of the study. It has been substantiated that the present interconnections between civil and constitutional legal proceedings are essential in the judicial mechanism for protecting human rights and freedoms and form the boundaries of proper legal procedure as the basic constitutional basis for judicial protection. The features of subordinate relationship, which are reflected in the specific legal positions of the decisions of the Constitutional Court, have been revealed. The regulatory and correlating relationship between litigations has been proved. Practical implications. Constitutional complaint is an effective tool for protection constitutional rights and freedoms of an individual and a citizen in many countries, but it is a relatively new legal institution in Ukraine. This article, devoted to the disclosure of the relationship between civil and constitutional legal proceedings, will assist in the study of the latter and making it more effective*

*and applicable. Value/originality: The conclusion is drawn that the relationship between the types of legal proceedings is mutual, that is, it involves the impact of one jurisdictional process on another one and vice versa. It has been proved that constitutional law is a system-building component of the national legal system and has an impact on the development and functioning of all other branches of public and private law.*

**Keywords:** Constitutional Court, Civil Process, Procedural Relationship, Subordination of Legal Norms, Constitutional Complaint, Decision of the Constitutional Court.

## INTRODUCTION

The countries in transition are characterized by a variety of political events, as well as by a number of constantly implemented reforms. They can also be defined as countries with developing democracies. It is the frequent socio-political and revolutionary events of the last decade (for example in Ukraine), permanent contradictory reforms in the area of law, changes in the constitutional structure of the country, that did not allow it to become a country with a strong economy. It also caused a significant migration of the population.

These factors, as well as the general trends of globalization lead to the fact that modern social relations undergo constant changes, transformations, and sometimes even mutation (Rapport, 2017). Moreover, any public relations in a State that are considered to be legal or yearn to it require timely regulation, especially in the areas of guaranteeing and ensuring fundamental human rights, including in the area of private law relations. Accordingly, the system and the structure of legal relations are getting complicated in the course of judicial protection of the rights and freedoms of individuals. The problem is aggravated when subjective civil rights are also fundamental and at the same time are subject to constitutional protection. And the judicial protection of the right does not always ends with a result that satisfies the party or parties.

The constitutional judicial process in the mechanism of protecting human rights and freedoms in different transition countries is aimed both at direct protection and at assisting such protection (as for example in Ukraine), since civil procedure could be renewed after judicial constitutional control in order to fully and effectively protect the rights and freedoms of individuals. Thus, a constitutional complaint acts as a tool to ensure full protection of the constitutional rights and freedoms of an individual and a citizen in many countries with a centralized form of constitutional control. For example, in Ukraine it is relatively new legal institution.

The constitutional complaint admirably encompasses into the mechanism for protecting human rights and we schematically represent it in this way: judicial review of the case → judicial supremacy → finality of constitutional decisions → possibility of renewal of civil litigation → final protection of the right at the national level.

Another form of appeal to the Constitutional Court, related to the protection of human rights, is judicial activism. Judicial activism is manifested in the appeal of courts and the parties to the process to the body of constitutional jurisdiction, setting up a specific request for the need to modernize and improve legislation (Negi, 2019). The decisions of the Constitutional Court, due to their binding nature, significantly affect the entire legal system, at the same time leaving it certain flexibility (Lemieux, 2017). A constitutional complaint can make a legal point in the mechanism for protecting human rights at the national level. It is thanks to the constitutional complaint that everyone is entitled to qualify for settlement of the dispute in a fair court. An

important aspect of such protection is the special legal procedures that arise for the initiative of the courts of incidental constitutional review in the Constitutional Court. Such procedures form special procedural relations between independent judicial processes, modifying the procedure for judicial protection of human rights at the national level.

We argue that the relationship between civil and constitutional proceedings are essential in the judicial mechanism for protecting human rights and freedoms and form the boundaries of proper legal procedure as the basic constitutional ground for judicial protection. The elements of subordinate interrelationship can be partially found in the normative regulation of the processes of protection of rights, but there is no in-depth scientific research in this area.

### **The Methodology of Relationship between Civil and Constitutional Proceedings as Open Systems**

The relationship between civil and constitutional legal proceedings are determined on the basis of the doctrine of judicial law as the universal theory of judicial authority in the post-Soviet countries with the centralized form of constitutional control (a separate body of constitutional jurisdiction).

To achieve the objectives of the article, we proceed from an understanding of the doctrine of judicial law as:

1. The combination of all judicial processes-procedural methods, abstracting, analyzing, synthesizing, induction, deduction;
2. As an integral branch of several branches of law-dialectic, systemic structural;
3. Identification of judicial law with judicial law-making and a certain functional element of judicial precedent for countries with an independent body of constitutional jurisdiction-extrapolation, decomposition and modeling.

We claim that the methodology of the doctrine of judicial law serves as a certain basis and forms objective links between civil and constitutional litigations, emphasizes their intersectionality precisely in the process of judicial protection of human rights. The interconnection between the courts of general jurisdiction and the body of constitutional jurisdiction are also important in the context of development of independence of the judiciary and, at the same time, the completeness of protection of the rights of individuals, which is as operational as possible.

Each scientific branch is characterized by its own range of methods aimed at the study of certain types of legal proceedings. As a rule, such methods are not fully intended to conduct inter-process research. Therefore, the methods we have chosen (integrative, systemic, systemic structural, interdisciplinary methods) are able to investigate the essence of the procedural phenomena, taking into account their general and specific features. We should note that the theory of constitutional law considers judicial authority, among other things, as a fairly small component of the object of constitutional law. The object of constitutional law covers the diversity of phenomena of predominantly substantive or organizational nature (Sokolov, 2014).

The key method is integrative in law in general, and in constitutional law in particular. This is the method of legal regulation of social relations by law of integration organizations, mode of knowledge and study of the current law of such organizations, the spheres of public life, regulated by them. The law of integration has the features most similar to international law and constitutional law. Accordingly, the method must contain the basic components of these two

main elements. Integrative method guarantees not only the coherence in the analysis and the study of various constitutional and legal phenomena, but also the ability to verify data integrity obtained in this process.

We argue that constitutional law is the system-building component of the national legal system, which affects the development and functioning of all other branches of public and private law in Ukraine. The integrative method of constitutional law that we use is to combine the will of the people into an indivisible whole, to direct it towards the achievement of its goals and objectives, including in terms of protecting human rights (Grimm, 2016).

Considering the methods of constitutional law from the perspective of relationship between civil and constitutional proceedings, we emphasize the presence of mandatory (method of subordination) and non-binding (method of coordination) legal regulation, and stress the priority of using the first one. The non-binding method is used to regulate certain types of constitutional legal relations.

Though, the other methods of constitutional legal regulation employed to use specific types of constitutional legal relations in constitutional legal proceedings are also applicable: the method of direct constitutional norm-fixing, the method of positive obligations, the method of resolution, the method of prohibition, the method of regulating the structure of legal relations, etc. (Skrypniuk, 2013).

An appeal to the methodology of constitutional law indicates that it is not intended for a detailed study of legal procedural phenomena. At the same time, we emphasize the priority of the proper legal procedure as a constitutional guarantee for judicial protection of the rights of individuals in this direction. It is also important for determining points of convergence between civil and constitutional legal proceedings within the framework of existing legal and procedural methods to protect the rights of individuals by the State independently, without further appeal of citizens to the international judicial jurisdictions.

We reveal the interconnection between civil and constitutional legal proceedings from the perspective of systematic approach, considering these processes as open systems. System, in the most general scientific understanding, is an ordered set of elements interconnected and interacting with each other, which is characterized by relative independence and organic unity, internal integrity and autonomy of functioning (Raz, 1997).

Jurisdictional process is an open system, which has a communicative property-the ability to interact with various systems and elements of systems in the external environment (closed systems do not have this ability). Thus, the judicial process as a type of jurisdictional process and at the same time as an open system is always associated with the human factor, since the person is a participant in the multi-plane phenomena within the judicial process.

The functional criterion for civil proceedings as an open system includes civil procedure itself and various types of proceedings (legal proceedings, separate proceedings, writ proceedings). The substantive criterion includes law enforcement cycles and law enforcement stages. Human factor is always present at all these stages and components of the process.

Similarly, constitutional legal proceedings, in addition to the above, interact with other complex social systems: the Parliament, the President, the Ombudsman, the Government, the Prosecutor's Office, the Bar, and the parties to the proceedings, as well as with different socio-economic processes that affect the order and the nature of the case under consideration in the Constitutional Court: inflation, recession, migration, unemployment, education crisis, etc. Besides, various legal and non-legal phenomena, such as morality, economic, demographic,

political challenges and other processes, which can be called “*social management*” as a whole, affect civil proceedings as well as constitutional one (Kurochkin, 2012).

Such an interconnection is not directly regulated by law, but is directly influenced by it (legal policy, legal culture, public inquiry, etc.), and is evident precisely at the stage of judicial protection, creating a complex topic of research of judicial law and economy, sociology and other branches of science. It is in this, as we believe, that the importance of interconnection of the studied processes as open systems appears to be.

### **Hierarchical Relationship between Civil and Constitutional Proceedings**

The specifics of the relationship between constitutional and civil proceedings is determined, on the one hand, by the appointment of constitutional proceedings, which is to protect constitutional rights and freedoms from violations; and on the other hand, the subject matter of the relationship, which is civil procedure. All forms of relationship between constitutional and civil proceedings in one way or another are related to checking the constitutionality of civil procedural rules and the laws of the branches of private law.

We argue that civil, economic, administrative proceedings (given the general grounds for their formation) and to some extent criminal proceedings, are interconnected by an obvious horizontal interconnection, like similar jurisdictional processes. However, they remain independent elements of the justice system.

As a counterweight to the mentioned above, constitutional proceedings is, shall we say, above all these processes, and have a unique specific procedure for commission and consideration of cases. Besides, just constitutional legal proceedings are characterized by a special methodology of mental activity or will of a scientific and doctrinal direction. This is what allows us to investigate the violation of objective fundamental human rights. All this indicates a key vertical relationship between civil and constitutional proceedings, since subjective law is protected indirectly in constitutional proceedings. The issue concerned of constitutional review is certain provisions of a particular law that contradict the Constitution (as the applicant considers).

We claim that the peculiarity of the relationship between the civil procedure and constitutional legal proceedings lies primarily in presence of the competence for constitutional review of all areas of normative legal regulation with the possibility of disqualification of legal norms by the Constitutional Court, which are the subject of a specific constitutional appeal. Constitutional proceedings, or rather, its results-the decisions of the Constitutional Court, adopted in cases on the conformity of laws and other legal acts with the Constitution – are the source of law. Therefore, it is natural that the legal views of the Constitutional Court when considering civil cases are additional, sometimes decisive arguments for determining the level of a legislative act. They often contain legal provisions of the opposite content than the provisions of the law that govern controversial relations.

Constitutional law exercises a decisive influence on constitutional proceedings, since the Constitutional Court decide the constitutional matters to protect the rights and freedoms of individuals on the basis of constitutional norms. We emphasize that in this case, the position presented in the decision of the Constitutional Court is subject to application to the disputed relations. This reflects the fact that the decisions of the Constitutional Court, although they are based on the provisions of the law, which must be reviewed for compliance with the

Constitution, are essentially legal provisions adjacent to the “*body*” of the Constitution. Therefore, their legal force is final.

Illustrating the relationship between constitutional and civil proceedings, we note that substantive law determines situations, in which judicial protection of civil law is possible or impossible (for example, in aleatory or in-kind obligations, clarification of the actual nature of disputed relations and, as a result, determination of jurisdiction). Substantive law also regulates the procedure for the protection and restoration of the rights, freedoms and legitimate interests of parties to the specific contentious legal relationship, which is the subject of legal proceedings.

The decisions of the Constitutional Court interact with all branches of law, adjusting the norms of the latter depending on to what extent the norms of laws contradict the Basic Law. Thus, this “*vertical*” substantive prerequisite is indicated by hierarchical (subordinate) links between the Constitution and sector legislation (Sokolov, 2014).

As an antithesis, we can try to call into question the foregoing and form a hypothesis that this is not a relationship between legal proceedings, but the principle of law: all laws must comply with the Constitution. By accepting this principle, we insist on the existence of subordinate relationship between constitutional and civil proceedings. After all, this is not about the conclusion of certain civil legal relations. We are investigating the problem of applying constitutional principles already at the stage of violation of the rights of individuals, when they launch a judicial process, in which the legitimacy of applying the provisions of the law should be determined in such a way that they comply with the Basic Law (Murkens et al., 2014). Only in this case the parties to the civil dispute, as well as other participants to the judicial processes of different jurisdictions, would have no hesitation in the validity of the decision.

The absence of an appeal against court decision is one of the key factors in recognizing a court decision as fair. It is the decision of the Constitutional Court that acts as the element that links civil procedure and constitutional proceedings with a subordinate legal provision at the stage of realization of the right to a constitutional complaint after using other legal methods of protecting the right, which allows, among other things, to initiate a review of a civil case in the light of fresh evidence or exceptional circumstances.

### **Normative and Corrective Relationship between Civil and Constitutional Proceedings**

The indicated subordinate relationship between constitutional and civil proceedings is the basis for the formation of the following relationship-regulatory and corrective (Federal Law, 1996).

During the consideration of cases and formation of the conclusion on unconstitutionality of certain provisions of laws, the Constitutional Court can always act only as a “*negative*” legislator. It does not have authority to formulate new legal norms, since it would invade the sphere of the separate branch of power-the Parliament. At the same time, if violation of the norms of the Constitution by the provisions of the law would be established in the process of constitutional proceedings, the Constitutional Court is obliged to take the side of the custodian of the Basic Law and disqualify such a norm (Gustavo, 2016).

This relationship is introduced into legal life using the method of “*direct constitutional norm-fixing*”, when the Constitutional Court clarifies the content of constitutional norms directly in its decisions (Gautam, 2019). Besides, the Constitutional Court establishes the procedure for applying the provisions of civil and civil procedure legislation in a manner consistent with the

Constitution of Ukraine using the method of positive obligations, if a specific constitutional case requires. Such power is provided, for example, by article 89.3 of the Law of Ukraine “*On the Constitutional Court of Ukraine*”.

We emphasize that when considering constitutional complaints in Ukraine, the Constitutional Court is also authorized to give constitutional interpretation of the rule of law. In practice, however, there is the risk of a double interpretation of laws: by the Supreme Court when reviewing a specific civil (and other) case and by the Constitutional Court. It is noteworthy that only decisions of the Constitutional Court of Ukraine are binding for all entities and throughout its territory, while the Supreme Court is obliged to guide the practice in the right direction by the uniform interpretation in judicial enforcement. In this case, the courts of the first instance and the courts of appeal should take into account the decisions of the Supreme Court, but not literally follow them.

This, in our opinion, creates certain conflict of subordination between civil and constitutional proceedings. It can be resolved by amending the Constitution of Ukraine. Namely, to pronounce the Constitutional Court the last mandatory authority at the national level, to which the applicant is obliged to appeal prior to international judicial institutions. Today, this appeal is the right of the person, not his (her) duty, which creates a double burden both on the Constitutional Court and on the European Court of Human Rights. And it does not contribute to the image of Ukraine as a truly legal State.

## CONCLUSION

We examined the conceptual issues of subordinate relationship between civil and constitutional proceedings under this article. Based on the experience of countries with centralized and decentralized forms of constitutional control, we analyzed all possible procedures that lead to the formation of relationship between independent types of legal proceedings as open systems of social management.

The methodology of the doctrine of judicial law serves as the basis for the study and formed objective links between civil and constitutional litigation, emphasized their interdependence precisely during the judicial protection of human rights. Integrative, imperative and dispositive methods that affect the independence of the judiciary and, at the same time, the completeness of protection of the rights of individuals as operational as possible are also important.

We have proposed the main forms of subordinate relationship between civil and constitutional proceedings:

1. Hierarchical relations between the Constitution of Ukraine and the acts of sectoral legislation of Ukraine on the basis of “*vertical*”, substantive perquisite, enshrined in the decisions of the Constitutional Court as a result of perfect constitutional review;
2. Regulatory and correlating relationship between civil and constitutional proceedings, which consist in adjusting the sources of law: specific norms of civil procedural law, family law, civil law, labor law, etc. during the verification of the latter in the process of constitutional proceedings;
3. Mutual influence of jurisdictional processes, when specific procedural activity of one judicial body gives rise to certain legal consequences for another judicial body.

In connection with commencement of court proceedings, judicial review or an appeal against the decision in a civil case is stopped. Court proceedings in another civil case on a similar

legal issue are stopped. Judicial decisions that have entered into force (but are not enforced) are subject to review, if civil proceedings are reviewed in the light of fresh evidence or if the norm applicable in a civil dispute is recognized as unconstitutional by the Constitutional Court.

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