European Journal of Law and Public Administration
ISSN: 2360-6754 | e-ISSN: 2559-7671
Covered in: Erih Plus; HeinOnline; CEEOL; RePEc; CrossRef; Google Scholar; KVK; WorldCat; ICI Journals Master List - Index Copernicus; EBSCO.

2023, Volume 10, Issue 2, pages: 95-102 | https://doi.org/10.18662/eljpa/10.2/212

Categories of Normative Acts Object of the Control of Constitutional Courts

Gabriela NEMȚOI [1]

[1] Associate Professor PhD, "Ştefan cel Mare" University of Suceava, Faculty of Law and Administrative Sciences, Suceava, Romania, gabriela.nemtoi@fdsa.usv.ro

JEL classification: K19, K49

Abstract: *The Constitutional Court was constituted in a body that was suitable for ensuring the legality of legal norms. In this respect, the Constitutional Court is in fact an independent body that submits to constitutionality control a series of acts with legal effects. In this context, the legislator has developed in a constitutional aspect a control that is applied by notifying the Constitutional Court. In the respective work, we will try to present comparatively the acts that are subject to constitutional control, within the different constitutional courts in different states. The essential idea on which this construction is based is precisely the variety of acts that can be subject to constitutional control precisely to establish their legality.*

From the reports of the Constitutional Courts, it is found that the unitary treatment of the categories of acts on which the constitutionality control is exercised is a difficult problem, taking into account the particularities of regulating the competencies of the Constitutional Courts, as well as the existing differences regarding the legislative systems of the countries. The variations, among others, the structure of these - unitary or federative states and the difference of conception regarding the method of applying constitutionality control, demonstrate the existence of a conceptual difference in establishing the legality of normative acts in consensus with the fundamental law.

Keywords: *Constitutional Courts, Constitutional Control, Constitutional Laws.*

How to cite: Nemțoi, G. (2023). Categories of normative acts object of the Control of Constitutional Courts. *European Journal of Law and Public Administration, 10*(2), 95-102. https://doi.org/10.18662/eljpa/10.2/212

©2023 Published by LUMEN Publishing. This is an open access article under the CC BY-NC-ND license

Introduction

To establish the issues addressed, we must mark the type of documents to which we refer and implicitly determine a distinction between the general and individual acts, respectively, within the latter, according to their issuer.

In some cases, the sphere of documents on which the control is exercised is delimited in this way, in the sense that it is shown that various normative or general acts enter this category. Thus, we distinguish varied situations in the first place of the type of state but also of the somewhat varied competence of the constitutional courts.

General regulatory acts and individual regulatory acts

In this comparative sense, we analysed some Constitutional Courts. The Constitutional Court of the Republic of Belarus (Belarus Constitution, 2013) states that in the exercise of the constitutionality control of *a posteriori*, it shall rule on the constitutionality of acts, provided that the matter has been duly referred to it in accordance with the competent subjects provided for by law. In contrast, the Constitutional Court of the Czech Republic (Czech Constitution, 1992) exercises the control of laws but also of "other regulations".

In this case the general aspects of the acts subject to scrutiny are mentioned. Basic requirements are concepts made up of two categories: general regulations and specific regulations. (Tudorel Toader, Marieta Safta, 2017).

The Constitutional Court of Slovenia has a much more extensive activity compared to that of the Constitutional Court of Romania, within the constitutionality control procedure, it decides on the constitutionality of laws, acts issued by local communities and general regulations.

The Constitutional Court of Serbia (Constitution of the Republic of Serbia, 2006) has the capacity to exercise control over acts, belonging to various authorities but also to legal persons, the common denominator of these acts being their general, more concrete character: acts of a general nature of the National Assembly, the President and the Government, but also acts of a general nature of other state authorities and bodies, statutes or acts of a general nature of authorities of autonomous provinces, statutes or acts of a general nature of local self-government bodies, political parties, trade unions and citizens' associations, rules of companies and institutions, chambers and

other associations, funds and other organisations of a general nature, or even acts relating to collective agreements.

The general aspect of character allows the establishment of a fairly wide range in what means normative acts. But within the competence of the Constitutional Courts, the constitutionality control has as object and individual acts.

The Constitutional Court of Austria (Austria Constitution, 2004) specifies that, in the text of the Austrian Federal Constitution, defining the political issuer, can be under control, in the sense that they give birth to or extinguish rights and duties, but they can form the object of constitutional control, any act which an act that is issued by an administrative entity, e.g. regulations or agreements between the Federation and the Länder. Separate from acts of a general nature although it is an individual act, as an exception, are judgments and decisions handed down by the Asylum Tribunal which can be appealed to the Constitutional Court.

Compared to the Constitutional Court of Austria, the Constitutional Court of Croatia (Croatia Constitution, 2013) exercises control over individual decisions enacted by all state or governmental bodies (implicitly also with respect to final decisions of the Supreme Court of the Republic of Croatia, as well as court judgments), local and regional self-government authorities and legal bodies of public administration, which is enshrined in the Constitution. The Constitutional Court of Lithuania (Lithuania Constitution,2003) can apply constitutionality control over all the acts issued by the Parliament, Government, or President regardless of the general or individual character. The Constitutional Court does not carry out any preliminary control of the laws. It is pronounced only on the laws in force (exercises only a posterior control). Also, the Constitutional Court is pronounced only at the referral, not ex officio. The topics that can notify the Constitutional Court are the Head of state, the Government, at least 1/5 of the members of the Parliament, and the courts.

The constitutional control regarding the constitutional legality can also be exercised by the courts. Thus, in Norway (Kingdom of Norway Constitution,1814), the courts review the constitutionality of laws and censor administrative acts, with the proviso that the courts do not review constitutionality in *abstracto* The Constitutional Court of Portugal states that only regulatory acts issued by public entities are subject to control.

The Constitution of Romania itself mentions the competence of the Constitutional Court in art. 146, 147, competencies that do not differ from the aspects listed to the other constitutional courts. In Romania, the

attributions of the Constitutional Court are aligned with the uniformity of the attributions of all the Constitutional Courts.

As we have noticed it is important to establish the character of the type of normative act that can be the subject of constitutional control because it can be seen that the individual act is rarely constitutional control and few constitutional courts also have this aptitude to establish the legality of individual acts. representing only the exception.

Primary regulatory acts and secondary regulatory acts

The acts subject to constitutionality control are divided into between the primary regulatory acts and those of secondary regulatory. If the acts of primary regulation, with some particularities, can be subject to the control of the constitutional courts, the secondary regulatory acts do not, in all cases, enter the control of the Constitutional Courts.

In this regard, we mention a few situations such as:

The Constitutional Court of Belgium (Kingdom of Belgium Constitution, 1831) has exclusive competence regarding the constitutionality exam of the legislative acts but does not have control attributions on the acts of executive power, which means the elimination of the secondary regulatory acts.

In the case of the Constitutional Court of the Czech Republic (Czech Constitution, 2002), it has competencies regarding only primary regulatory acts by Art. 87 leaving this competence to the Supreme Administrative Court. (Art. 87 para. 2).

The Constitutional Court of Italy does not have control over the secondary legislation, for example, acts dictated by the Government. Such acts are subject to review by judges of ordinary or administrative courts.

With regard to Romania, the Constitutional Court refers to acts issued by the Government and states that these are, according to Article 108(1) of the Constitution, decisions and ordinances. Simple and emergency ordinances (Article 146(d) of the Constitution and Article 29(1) of Law No 47/1992) may be subject to review by the Court, as they are primary regulatory acts, whereas government decisions fall within the sphere of secondary regulation and are subject to legality review by the administrative courts.

Types of acts that are subject to the constitutional control of the Constitutional Court

IV.1. The laws

Essentially the notion of "law" covers a quite vast meaning in the specialized literature, so it must be treated in all hypostases that give a maximum complexity. Thus, the object of constitutionality control is the normative laws and acts with the power of law.

For example, in the case of Italy, by law, we must understand many normative acts such as: the laws adopted by the state, the legislative decrees adopted based on a delegation (normative acts issued by the executive by the ability granted by the Parliament) and Decrees - laws, normative acts issued by the executive as an urgent and necessary reaction to certain emergencies and which, after sixty days, must be converted to a law adopted by the Parliament.

The Court can also rule on the legality of the rules issued in the provinces of Bolzano and Trento, which form the Trentino-Alto Adige region). Constitutionality review also applies to presidential decrees declaring the repeal of a law or other regulatory act following a referendum, in accordance with Article 75 of the Constitution (Republic of Italy Constitution , 1947).

In Spain (Kingdom of Spain Constitution, 1978) the court verifies fulfillment of the Constitution of "laws, provisions of regulations or legal acts".

Through the terminology of laws we mean according to the Spanish Constitution any normative act with the power of law such as: the statutes of autonomy and the organic laws; laws, provisions of regulations, and state documents with the law (the legislative decrees, which are the power provisions enacted by the Government based on the delegation granted by the Parliament, the court has the competence of constitutional control provided that the attributes of control belonging to the courts of common law); the regulations of the Chamber and the General Cortes (Parliament); acts and regulatory provisions with the power of law adopted by the autonomous communities, with the same exception mentioned regarding the cases of legislative delegation; the regulations of the legislative assemblies of the autonomous communities.

In the case of Hungary, the Constitution (Republic of Hungary Constitution, 2011, rev 2016) refers only to the formal framework, the law in the formal sense, respectively of an act of the legislative power, with a general

character, adopted after a predetermined procedure. All categories of laws are subject to the control of the Constitutional Court.

A peculiarity is represented by the federative states. For example, in the Russian Federation (Russian Federation Constitution, 1993), the Constitutional Court is competent to ensure constitutionality control in cards, laws, and other normative acts of the entities of the Russian Federation, adopted in matters of the competence of the state bodies in the Russian Federation or the common competence of the state bodies in the Federation Russian and the entities of the Russian Federation.

In another federation Switzerland, the constitutionality control of the federal laws is executed by the federal court. The Swiss federal court is obliged to apply them (Art. 190 of the Constitution (Switzerland Constitution, 2000)). Abstract control is excluded in all these cases (Art. 189 paragraph 4 of the Constitution). The federal court can neither cancel the law nor refuse to implement it. He has the opportunity to ascertain the unconstitutionality by issuing a decision, but also by signalling it in his annual management report, presented to the Parliament, in the section entitled "Indications to the legislator's attention". Federal ordinances cannot be notified before the Swiss federal court (Art. 189 para. 4 of the Constitution). So, consequently, abstract control is excluded from this category of laws, a concrete control made by the federal court is accepted.

We conclude by emphasizing that the law is the subject of constitutional control made by most constitutional courts of all states with small exceptions.

International treaties

International treaties have been considered as a different object of the constitutional control of the Constitutional Courts in different states. However, the control is carried out before ratification or promulgation, as a preventive measure, compared to the conclusion of a treaty outside the limits allowed by the Constitution such as: Albania, Andorra, Czech Republic, Russian Federation, France, Lithuania, Poland, Romania or after ratification in the states such as Serbia, Latvia, as a consequence of justification.

Parliament regulations or other types of normative acts of the Parliament

The general acts of the Parliament (the legislative authority), other than the laws (in Denmark the decisions of the Parliament are subject to constitutional control, the decisions of the Permanent Bureau of Riigikogu in Estonia), are the subject to the control of the Constitutional Courts such as:

Armenia, Azerbaijan, Denmark, the Russian Federation, Georgia, Republic of Moldova, Estonia, Serbia, Spain, and Ukraine.

Decrees/Decisions/Orders/Acts General of the President of the Republic

The Constitutional Court is competent to control the general character documents issued by the President of the Republic in States such as: Armenia, Azerbaijan, Russian Federation, Georgia, Republic of Moldova, Estonia, Serbia, and Ukraine.

The documents/decisions of the local public administration

Few states categorize the documents issued by the local administration acts with a power of law, but we must remember that this type of act has "law character", for the respective community from a legal point of view. Consequently, we have: - the decisions of the local autonomous organs in Armenia; - the normative acts of the central public administration bodies in Albania; municipal acts in Azerbaijan; - and acts of legal entities of public authority, including local and regional autonomous bodies in Croatia.

Conclusions

In most of the countries mentioned, Constitutional Review is a procedure for bringing the text of the law into line with the fundamental law, an operation which is the responsibility of the Constitutional Courts.

In this case, however, the extent of compliance is quite variable, and a number of factors are at stake here, such as the establishment of procedures and bringing the act declared unconstitutional into line with the provisions of the Constitution. The scope of the review is also quite varied, and is aimed at each individual state with its own specific features. Moreover, the timing of the 'a priori' or 'a posteriori' review is again a condition justifying the position of the issuer of the subject matter of the constitutionality review.

References

Belarus Constitution https://constitutii.files.wordpress.com/2013/02/by016en.pdf

Czech Constitution https://constitutii.wordpress.com/2013/02/cehia.pdf

Tudorel Toader, Marieta Safta, Constitutional Justice: functions and relations with the other authorities, International Conference of Constitutional Courts, period September 10-13, 2017, in Vilnius, https://www.ccr.ro/wp-content/uploads/2020/08/raportgeneralro.pdf

Constitution of the Republic of Serbia
https://constitutii.wordpress.com/2013/01/rs011en.pdf

Austria Constitution https://constitutii.wordpress.com/2013/02/austria.pdf

Croatia Constitution https://constitutii.wordpress.com/2013/02/croatia.pdf

Lithuania Constitution
https://constitutii.files.wordpress.com/2013/01/lituania.pdf

Kingdom of Norway Constitution
https://constitutii.wordpress.com/2013/01/20/constitutia-regatului-norvegiei/

Kingdom of Belgium Constitution
https://constitutii.files.wordpress.com/2013/02/belgia.pdf

Czech Constitution https://constitutii.wordpress.com/2013/02/cehia.pdf

Republic of Italy Constitution
https://constitutii.wordpress.com/2013/01/italia.pdf

Kingdom of Spain Constitution
https://constitutii.wordpress.com/2013/01/spania.pdf

Republic of Hungary Constitution
https://constitutii.files.wordpress.com/2013/01/ungaria.pdf

Russian Federation Constitution
https://constitutii.wordpress.com/2013/01/18/constitutia-federatieiruse.pdf

Switzerland Constitution
https://constitutii.files.wordpress.com/2013/01/constituc5a3ia-federalc483-a-confederac5a3ieielvec5a3iene-romanian.pdf