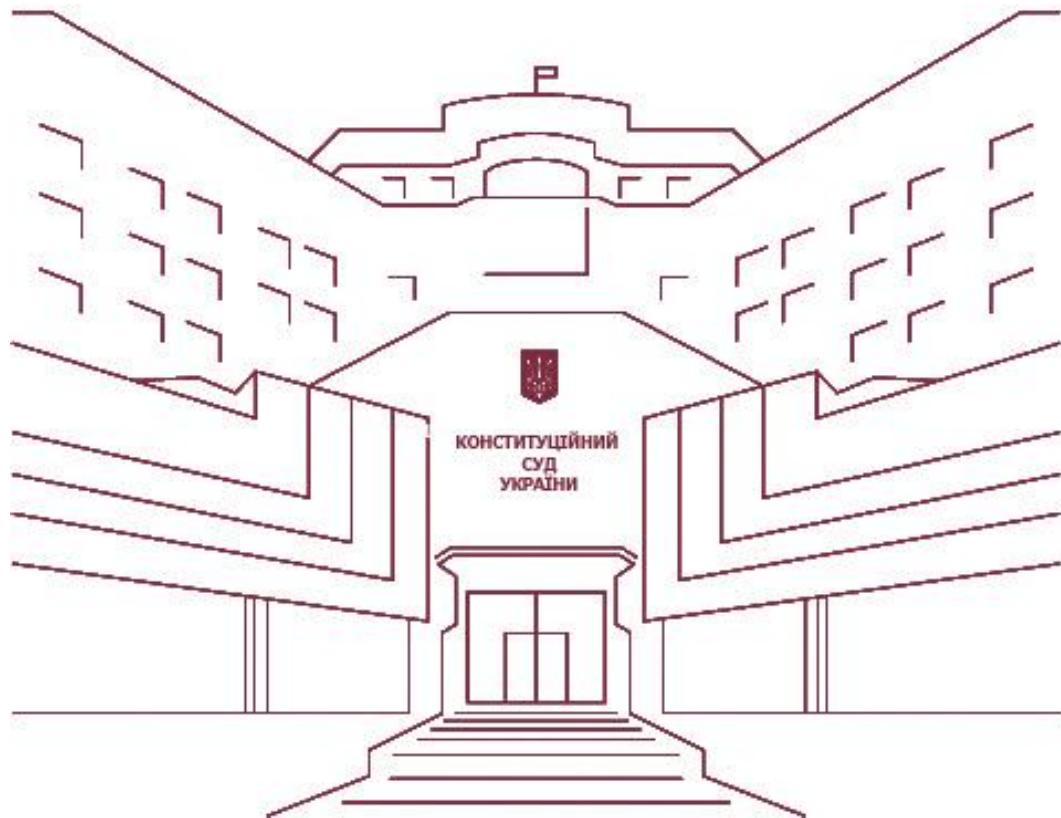




THE CONSTITUTIONAL COURT OF UKRAINE  
INFORMATION REPORT

2020

*Approved by the Resolution of the Constitutional Court of Ukraine  
dated June 29, 2021, No. 4-p/2021*



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## PREFACE

2020 was a year of hard work for the Constitutional Court of Ukraine, marked by new accomplishments and challenges that have had a significant impact on the Court's performance of its constitutional duties.

During 2020, the Constitutional Court of Ukraine adopted **507** acts: 21 judgements upon constitutional petitions and constitutional complaints, of which 13 - judgments of the Grand Chamber of the Constitutional Court of Ukraine, 8 - judgments of the Senates of the Constitutional Court of Ukraine, 234 - rulings to refuse to initiate constitutional proceedings and 17 rulings to terminate constitutional proceedings in the case.

The judgments of the Constitutional Court of Ukraine adopted in 2020 concerned the constitutional human and citizen's rights and freedoms, the judiciary and the status of judges, the activities of judicial self-government bodies, law enforcement agencies and the state's anti-corruption policy.

In view of the announcement of quarantine in Ukraine and the introduction of restrictive anti-epidemic measures to prevent the spread of acute respiratory disease COVID-19, the Constitutional Court of Ukraine introduced flexible mode of work, which, in particular, provided different time to start and finish work for judges of the Constitutional Court of Ukraine and employees of the Secretariat of the Constitutional Court of Ukraine, work in real time via the Internet, as well as remote (distance) work.

At the same time, anti-epidemic restrictive measures have given impetus to improve existing and find new forms of cooperation and interaction between the Constitutional Court of Ukraine and national and international partners.

During 2020, the Constitutional Court of Ukraine together with international partners organised and held a number of scientific and practical events, international online conferences and online seminars on the activities of the Constitutional Court of Ukraine.

The information report includes the most important aspects of the activity of the Constitutional Court of Ukraine in 2020, in particular the analysis of the acts adopted by the Constitutional Court of Ukraine upon constitutional petitions, constitutional appeals and constitutional complaints, as well as issues of their observance. Particular attention is paid to the powers of the Constitutional Court of Ukraine, international cooperation, cooperation with civil society, as well as ensuring the activities of the Constitutional Court of Ukraine, designed to protect the interests of the people and the state as a whole.

## I. THE CONSTITUTIONAL COURT OF UKRAINE IN 2020

### POWERS

The Constitutional Court exercises the powers identified in the Constitution and the Law of Ukraine "On the Constitutional Court of Ukraine".



*Courtroom of the Constitutional Court of Ukraine  
(Kyiv, 14, Zhylyanska street)*

The powers of the Constitutional Court include:

1) Deciding on conformity to the Constitution of Ukraine (constitutionality) of the following acts:

- laws and other legal acts of the Verkhovna Rada of Ukraine;
  - acts of the President of Ukraine;
  - acts of the Cabinet of Ministers of Ukraine;
  - legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea;
- 2) official interpretation of the Constitution of Ukraine;
- 3) exercise of other powers provided for by the Constitution of Ukraine.

The matters provided for in paragraphs 1 and 2 shall be considered following the constitutional submissions of:

the President of Ukraine, at least 45 MPs, the Supreme Court, the Ukrainian Parliament Commissioner for Human Rights, the Verkhovna Rada of the Autonomous Republic of Crimea.

Upon the application of the President or at least 45 MPs, or the Cabinet of Ministers, the Constitutional Court shall provide opinions regarding constitutionality of effective international treaties or international treaties submitted to the Verkhovna Rada with the purpose of receiving consent to make them binding.

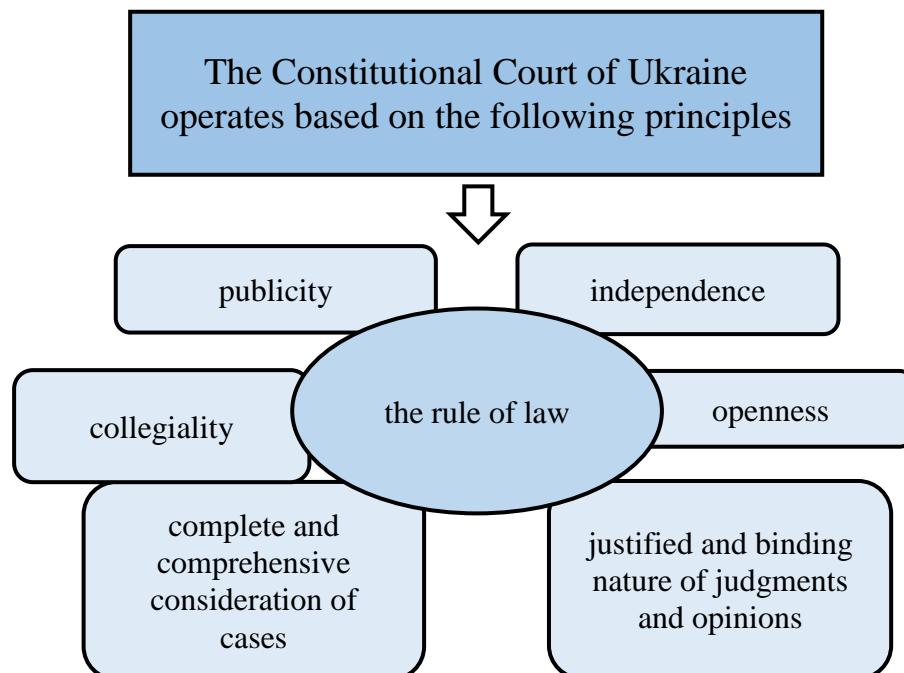
Upon the application of the President or at least 45 MPs, the Constitutional Court shall provide opinions regarding constitutionality of issues proposed for a national referendum following popular initiative.

Upon the application of the Verkhovna Rada, the Constitutional Court shall provide opinions regarding compliance with the constitutional procedure of investigation and consideration of the case of removal of the President of Ukraine from office by impeachment.

The Constitutional Court shall decide on the conformity (constitutionality) of the law if a constitutional complaint was filed by a person who believed that the law applied in the final court judgment in his case contradicted the Constitution. A constitutional complaint may be filed if all other national remedies have been exhausted.

Judgments and opinions issued by the Constitutional Court shall be binding, final and may not be appealed.

## PRINCIPLES OF COURT OPERATIONS



## **THE ORGANISATIONAL STRUCTURE**

The Constitutional Court consists of the Grand Chamber, two senates and six panels with the status of bodies of the Constitutional Court.

The Chairman of the Constitutional Court, Deputy Chairman, the secretaries of the panels of judges of the Constitutional Court exercise representative, organisational and administrative functions.

Standing committees are the support bodies of the Constitutional Court dealing with the organisation of its internal work.

The Secretariat of the Constitutional Court provides organisational, analytical, legal, information and logistical support to the Constitutional Court.

Research and Advisory Council is formed at the Constitutional Court from among highly qualified specialists in the field of law for the preparation of research opinions on the activities of the Constitutional Court.

## **THE COMPOSITION OF THE CONSTITUTIONAL COURT**

The Constitutional Court consists of 18 judges.

The entities with equal powers regarding appointment of the judges of the Constitutional Court are the President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine.

The selection of candidates for the position of judge of the Constitutional Court is carried out on a competitive basis in accordance with the procedure established by law.

To become a judge of the Constitutional Court, candidates must comply with the following requirements: Ukrainian citizenship, knowledge of the official language, be at least forty years old by the date of official appointment, have a law degree and at least fifteen years of professional experience in the field of law, possess high moral values and be a lawyer of recognised competence.

A judge of the Constitutional Court is appointed for 9 years without the right to be reappointed.

The Judge of the Constitutional Court receives the powers as of the day of taking the oath at the special plenary session of the Constitutional Court.

At a special plenary session of the Constitutional Court, the members elect the Chairman by secret ballot for one three-year term only.

The composition of the Constitutional Court of Ukraine included:

Oleksandr TUPYTSKYI  
– Chairman of the Constitutional Court

Viktor HORODOVENKO

Oleksandr KASMININ

Viktor KRYVENKO

Oleksandr LYTVYNOV

Oleh PERVOMAISKYI

Ihor SLIDENKO

Serhiy HOLOVATYI –  
Deputy Chairman of  
the Constitutional Court

Iryna ZAVHORODNIA

Viktor KOLISNYK

Vasyl LEMAK

Volodymyr MOISYK

Serhiy SAS

Petro FILIU

Halyna YUROVSKA

THE GRAND CHAMBER OF THE CONSTITUTIONAL COURT OF UKRAINE



Oleksandr Tupytskyi  
(Chairman)



Serhiy Holovatyi  
(Deputy Chairman)



Viktor  
Horodovenko



Iryna  
Zavhorodnya



Oleksandr  
Kasminin



Viktor  
Kolisnyk



Viktor  
Kryvenko



Vasyl  
Lemak



Oleksandr  
Lytvynov



Volodymyr  
Moisyk



Oleh  
Pervomaiskyi



Serhiy  
Sas



Ihor  
Slidenko



Petro  
Filiuk



Halyna  
Yurovska

## THE FIRST SENATE OF THE CONSTITUTIONAL COURT OF UKRAINE



Oleksandr Tupytskyi  
(Chairman)



Iryna  
Zavhorodnya



Viktor  
Kolisnyk



Viktor  
Kryvenko



Oleksandr  
Lytvynov



Serhiy  
Sas



Petro  
Filiuk

## THE SECOND SENATE OF THE CONSTITUTIONAL COURT OF UKRAINE



Serhiy Holovatyi  
(Deputy Chairman)



Viktor  
Horodovenko



Oleksandr  
Kasminin



Vasyl  
Lemak



Volodymyr  
Moisyk



Oleh  
Pervomaiskyi



Ihor  
Slidenko



Halyna  
Yurovska

## ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE IN 2020

<b>In 2020 the Constitutional Court of Ukraine and its bodies held:</b>	
Plenary sessions of the Grand Chamber of the Constitutional Court of Ukraine	<b>221</b>
Sessions of the Grand Chamber of the Constitutional Court of Ukraine	<b>67</b>
Plenary sessions of the First Senate of the Constitutional Court of Ukraine	<b>32</b>
Sessions of the First Senate of the Constitutional Court of Ukraine	<b>9</b>
Plenary sessions of the Second Senate of the Constitutional Court of Ukraine	<b>89</b>
Sessions of the Second Senate of the Constitutional Court of Ukraine	<b>22</b>
Sessions of the Panels of Judges of the First Senate of the Constitutional Court of Ukraine	<b>72</b>
Sessions of the Panels of Judges of the Second Senate of the Constitutional Court of Ukraine	<b>77</b>
Special Plenary Sessions of the Constitutional Court dealing with organisational issues	<b>3</b>
Plenary Sessions of the Constitutional Court dealing with organisational issues	<b>37</b>
Meetings of the Standing Commissions of the Constitutional Court of Ukraine	<b>18</b>
<b>Acts adopted by the Constitutional Court:</b>	
Judgments of the Grand Chamber of the Constitutional Court of Ukraine	<b>13</b>
- <i>in the cases upon constitutional petitions;</i>	10
- <i>in the cases upon constitutional complaints.</i>	3
Judgments of the First Senate of the Constitutional Court of Ukraine	<b>4</b>
Judgments of the Second Senate of the Constitutional Court of Ukraine	<b>4</b>
Rulings of the Grand Chamber of the Constitutional Court of Ukraine (at plenary sessions):	<b>9</b>
- <i>on termination of constitutional proceeding in cases</i>	4
- <i>other rulings (on unification/separation of constitutional proceedings, on the form of case consideration, on renewal of case consideration etc.)</i>	5
Rulings of the Grand Chamber of the Constitutional Court of Ukraine (at sessions):	<b>105</b>
- <i>on initiation of constitutional proceedings in cases</i>	2

<ul style="list-style-type: none"> <li>- on refusal to initiate constitutional proceedings in cases</li> <li>- other rulings (on extension of the term of adopting Panel ruling on initiating or refusing to initiate constitutional proceedings in a case, on the form of case consideration, on involvement in case consideration, on self-recusal etc.)</li> </ul>	5 98
Rulings of the First Senate of the Constitutional Court of Ukraine (at plenary sessions): <ul style="list-style-type: none"> <li>- on termination of constitutional proceeding in a case</li> <li>- on refusal to consider the case in favour of the Grand Chamber of the Court</li> <li>- other rulings (on the unification of constitutional proceedings, on the denial of granted requests for clarification of the Court's judgment, etc.)</li> </ul>	<b>9</b> 2 2 5
Rulings of the First Senate of the Constitutional Court of Ukraine (at sessions): <ul style="list-style-type: none"> <li>- other rulings (on the form of consideration of the case, on the temporary involvement of a judge in a non-competent panel of judges, etc.)</li> </ul>	<b>10</b> 10
Rulings of the Second Senate of the Constitutional Court of Ukraine (at plenary sessions): <ul style="list-style-type: none"> <li>- on termination of constitutional proceeding in a case</li> <li>- on refusal to consider the case in favour of the Grand Chamber of the Court</li> <li>- other rulings (on the unification of constitutional proceedings, on the denial of granted requests for clarification of the Court's judgment, etc.)</li> </ul>	<b>16</b> 11 3 2
Rulings of the Second Senate of the Constitutional Court of Ukraine (at sessions): <ul style="list-style-type: none"> <li>- on refusal to initiate the constitutional proceedings in a case</li> <li>- other rulings (on the temporary involvement of a judge in a non-authorised panel of judges, on the form of consideration of the case, on the self-recusal of a judge, etc.)</li> </ul>	<b>21</b> 3 18
Rulings of the panels of judges of the First Senate of the Constitutional Court of Ukraine: <ul style="list-style-type: none"> <li>- on initiation of constitutional proceedings in the cases upon constitutional petitions</li> <li>- on initiation of constitutional proceedings in the cases upon constitutional complaints</li> <li>- on refusal to initiate constitutional proceedings in the cases upon constitutional petitions</li> <li>- on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (unanimously);</li> <li>- other ruling (on election of the secretary of the panel of judges)</li> </ul>	<b>138</b> 12 10 4 111 1

Rulings of the panels of judges of the Second Senate of the Constitutional Court of Ukraine: <ul style="list-style-type: none"> <li>- <i>on initiation of constitutional proceedings in the cases upon constitutional petitions;</i></li> <li>- <i>on initiation of constitutional proceedings in the cases upon constitutional complaints;</i></li> <li>- <i>on refusal to initiate constitutional proceedings in the cases upon constitutional petitions;</i></li> <li>- <i>on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (unanimously);</i></li> <li>- <i>on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (dissenting).</i></li> </ul>	<b>141</b>
	13
	8
	2
	<b>115</b>
	3
Resolutions adopted at the session of the Constitutional Court of Ukraine	<b>37</b>
<b>Documents added to the acts of the Constitutional Court:</b>	
Dissenting opinions of judges of the Constitutional Court :	<b>45</b>
- <i>to the judgments of the Grand Chamber of the Court;</i>	34
- <i>to the rulings of the Grand Chamber of the Court;</i>	2
- <i>to the judgments of the Second Senate of the Court;</i>	5
- <i>to the judgments of the First Senate of the Court;</i>	2
- <i>to the rulings of the Second Seante of the Court.</i>	2

## **II. ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE BELONGING TO THE FUNCTION OF CONSTITUTIONAL REVIEW**

### **2.1. PROTECTION OF THE CONSTITUTIONAL RIGHTS AND FREEDOMS: ACTS OF THE CONSTITUTIONAL COURT OF UKRAINE ADOPTED IN 2020**

#### **JUDGMENTS**

##### ***JUDGMENTS UPON CONSTITUTIONAL PETITIONS***

###### **JUDGMENT No. 1-r/2020 of January 23, 2020**

The case upon the constitutional petition of 49 People's Deputies of Ukraine concerning the compliance of specific provisions of Section I, paragraph 2 of Section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Pension Provision" of March 2, 2015 No. 213-VIII with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Ihor Slidenko.

The Constitutional Court of Ukraine declared Article 13, Article 14.2, paragraphs "b" - "d" of Article 54 of the Law of Ukraine "On Pension Provision" of November 5, 1991 No. 1788-XII as amended [Law No.1788], introduced by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Pension Provision" of March 2, 2015 No. 213 – VIII [Law No. 213], to be inconsistent with the Constitution of Ukraine (unconstitutional).

The Constitutional Court of Ukraine proceeded from the fact that changes in the grounds for exercising the right to a pension on preferential terms, taking into account the relevant length of service and pension for years of service affected individuals' expectations regarding the legal consequences of realisation of the right to retirement.

Persons belonging to a certain category of employees were participants in legal relations in which they objectively foresaw the occurrence of the relevant consequences, namely the appointment of pensions, ie their legitimate expectations were related to the provisions of Law No. 1788 as amended by Law No. 213. Consequently, the change in the conditions for appointing pensions to persons belonging to a certain category of employees, taking into account the relevant length of service, has led to such regulatory regulation of pensions, which significantly affected the expectations of these persons, worsened their legal status which should be implemented when changing the regulations only in the case of a fair improvement in working conditions and confidence in the occurrence of the relevant legal consequences associated with the exercise of the right to retirement.

Thus, Article 13, Article 14.2, paragraphs "b" - "d" of Article 54 of Law No. 1788, as amended by Law No. 213, which provides for a gradual increase by

5 years of retirement age on preferential terms, taking into account the relevant length of service work and retirement pension for employees defined in these norms, violate the legitimate expectations of such persons, and therefore contradict Article 8.1 of the Constitution of Ukraine, i.e. violate the principle of the rule of law, the part of which is legal certainty.

Dissenting opinion to the Judgment was delivered by judge Oleksandr Lytvynov. Delivering it, the judge of the Constitutional Court of Ukraine put forward a number of arguments that the issue of compliance of regulations concerning the constitutional right to social protection with the Constitution of Ukraine should be decided taking into account the provisions of Section II "Human and Citizen's Rights, Freedoms and Responsibilities" of the Fundamental Law of Ukraine.

## **JUDGMENT No. 2-r/2020 of February 18, 2020**

The case upon the constitutional petition of the Supreme Court of Ukraine on the compliance of specific provisions of paragraphs 4, 7, 8, 9, 11, 13, 14, 17, 20, 22, 23, 25 of Section XII "Final and Transitional Provisions" of the Law "On the Judiciary and Status of Judges" dated June 2, 2016 No. 1402-VIII with the Constitution (constitutionality). Judge-Rapporteur in the case – Ihor Slidenko.

The Constitutional Court of Ukraine held to declare the provisions of paragraphs 4, 8, 9, 11, 13, 17 of Section XII "Final and Transitional Provisions" of the Law "On the Judiciary and Status of Judges" of June 2, 2016 No. 1402-VIII as amended (Law No.1402) to be in conformity with the Constitution of Ukraine (constitutional).

In addition, the Constitutional Court of Ukraine declared as such that do not conform to the Constitution of Ukraine (are unconstitutional) the provisions of Section XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402-VIII as amended:

- paragraph 7 "and are liquidated" in the part of the Supreme Court of Ukraine;
- paragraph 14 "Judges of the Supreme Court of Ukraine";
- paragraph 25.

The Constitutional Court of Ukraine proceeded from the fact that the Verkhovna Rada of Ukraine, when adopting laws of Ukraine to implement the relevant provisions of the Constitution of Ukraine, must adhere to constitutionally defined limits, including those concerning the status, organisation, functioning, activities of relevant bodies and their officials.

The bodies of state power enshrined in the Constitution of Ukraine have a special status of constitutional bodies, thus the liquidation, renaming, and revision of their constitutionally defined functions and powers in a way that significantly (radically) changes their constitutional nature are possible only after amendments to the Basic Law of Ukraine in the manner prescribed by Section XIII "Amendments to the Constitution of Ukraine".

When amending the Constitution of Ukraine, the principle of institutional continuity must be ensured, which means that bodies of state power established by

the Basic Law of Ukraine continue to function in the interests of the Ukrainian people and exercise their powers, perform tasks and functions defined in the Constitution of Ukraine despite any changes, unless these changes provide for a significant (radical) change in their constitutional status, including their liquidation.

The Constitutional Court of Ukraine considers that amendments to the Constitution introduced by Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding the judicial system)" of June 2, 2016 No. 1401–VIII [Law No. 1401] were not aimed at terminating the activities and liquidating the Supreme Court of Ukraine as a body of state power by removing the word "Ukraine" - the state's own name - from the verbal construction "Supreme Court of Ukraine". Thus, Law No. 1401 did not violate the principle of institutional continuity of the functioning of the highest institution of the judiciary.

The provisions of paragraphs 4, 8, 9, 11, 13 of Section XII "Final and Transitional Provisions" of Law No. 1402 do not contradict the Constitution of Ukraine, as they were adopted to legally regulate the functioning of the Supreme Court in the judicial system of Ukraine, which after amendments to the Constitution introduced by Law No. 1401 operates under the name "Supreme Court".

The Verkhovna Rada, in deciding on the need for the participation of judges whose powers had been terminated in connection with the expiration of the term for which they were appointed, in the competition for the office of judge, acted within the limits of their constitutional powers to fulfil the requirements of subparagraph 4 of paragraph 16<sup>1</sup> of Chapter XV "Transitional Provisions" of the Constitution. The participation of such judges in this competition on a general basis is consistent with the requirements of Articles 8.1, 126.5, 126.6, 128.2 of the Basic Law.

The Constitutional Court of Ukraine pointed out that the provisions of the Constitution of Ukraine concerning the conduct of the evaluation of judges should be enshrined in detail in law and take into account the system of interrelated norms of the Constitution of Ukraine, in particular Articles 125, 126, and 128. Since the Supreme Court is the constitutional body, a special procedure for regulating the Supreme Court judges' activity must be established, and since judges of the Supreme Court of Ukraine are judges of the highest court enshrined in the Constitution of Ukraine, taking into account the invariability of their status, the legislator should provide for a special procedure and evaluation criteria for these judges.

The renaming of the body enshrined in the Constitution of Ukraine - the Supreme Court of Ukraine - cannot take place without the transfer of judges of the Supreme Court of Ukraine to the positions of judges of the Supreme Court, as there are no differences between the legal status of a judge of the Supreme Court of Ukraine and the judge of the Supreme Court, and the removal of the word "Ukraine" - the proper name of the state - from the verbal construction "Supreme Court of Ukraine" can not be grounds for dismissal of all judges of the Supreme Court of Ukraine or their transfer to another court, especially a lower court. Therefore, judges of the Supreme Court of Ukraine must continue to exercise their powers as judges of the Supreme Court, hence the actual differentiation between the judges of the Supreme Court of Ukraine and those of the Supreme Court is not consistent with the principle

of irremovability of judges, which is a part of the constitutional guarantee of the independence of judges.

The Constitutional Court considers that the monthly lifetime allowance of a retired judge should be commensurate with the judicial remuneration received by a competent judge. In the event of an increase in such remuneration, the recalculation of the previously assigned monthly lifetime allowance of a retired judge shall be made automatically. The establishment of different approaches to the procedure for calculating the monthly lifetime allowance of judges violates the status of judges and guarantees of their independence.

Dissenting opinions were delivered by judges Serhiy Holovaty, Viktor Horodovenko, Oleksandr Kasminin, Oleh Pervomaiskyi, Petro Filiuk, Ihor Slidenko. The complexity and multifaceted nature of the subject of constitutional review in this case led to the arguments put forward by judges of the Constitutional Court of Ukraine regarding the study of a number of issues related to the implementation of judicial reform in 2016.

### **Judgment No. 3-r/2020 of February 27, 2020**

The case upon the constitutional petition of 46 People's Deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine. Judge-Rapporteur in the case - Volodymyr Moisyk.

The Constitutional Court of Ukraine has declared a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine [Code] to be inconsistent with the Constitution of Ukraine (unconstitutional) in part, which provides that the rules and provisions of Articles 12, 13, 14, 15 and 16 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" are applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on available financial resources and local budgets and budgets of funds of compulsory state social insurance.

The Constitutional Court of Ukraine noted in this case that the subject of regulation of the Code, as well as the subject of regulation of laws of Ukraine on the State Budget of Ukraine for each year, is special, stipulated by the provisions of paragraph 1 of Article 92.2 of the Basic Law of Ukraine.

Based on the fact that the subject of regulation of the Code, as well as the subject of regulation of laws of Ukraine on the State Budget of Ukraine for each year, is special, stipulated by the provisions of paragraph 1 of Article 92.2 of the Basic Law of Ukraine, the Constitutional Court of Ukraine concluded that the Code may not amend other laws of Ukraine, suspend or repeal them, as well as establish other (additional) legislative regulation of relations other than that which is subject to special regulation by other laws of Ukraine.

Establishment by paragraph 26 of Section VI "Final and Transitional Provisions" of the Code other than in Articles 12, 13, 14, 15 and 16 of the Law of

Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" of October 22, 1993 No. 3551-XII [Law No. 3551], legislative regulation of relations in the field of benefits to war veterans causes legal uncertainty in the application of these provisions of the Code and the Law No. 3551, which contradicts the principle of the rule of law established by Article 8 of the Constitution of Ukraine.

The Constitutional Court of Ukraine concluded that a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Code insofar as it provides that the norms and provisions of Articles 12, 13, 14, 15 and 16 of Law No. 3551 applied in the manner and amount established by the Cabinet of Ministers of Ukraine, based on available financial resources of state and local budgets and budgets of compulsory state social insurance, contradicts Article 8.1, Article 17.5 of the Constitution of Ukraine.

Dissenting opinion was delivered by judge Oleh Pervomayskyi. The judge of the Constitutional Court of Ukraine drew attention to some aspects related to the formation of the motivating part of the acts of the Constitutional Court of Ukraine.

## **JUDGMENT No. 4-r/ 2020 of March 11, 2020**

The case upon the constitutional petition of the Supreme Court on the constitutionality of certain provisions of the laws of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402-VIII, "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Bodies of Judicial Self-government" of October 16, 2019 No. 193-IX, "On the High Council of Justice" of December 21, 2016 No. 1798-VIII. Judge-Rapporteur in the case - Petro Filiuk.

The Constitutional Court of Ukraine has declared as such that do not comply with the Constitution of Ukraine (are unconstitutional):

- Article 37.1, Article 94.1, paragraph 3 of Article 135.3 of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402-VIII as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Bodies of Judicial Self-government" of October 16, 2019 No. 193-IX [Law No. 1402];

- paragraphs 4, 5, 6, 7, 9, 10 of Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Bodies of Judicial Self-government" of October 16, 2019 No. 193-IX [Law No. 193];

- Article 24.3, Article 28-1, Article 31.8, Article 42.1, Article 47.3, Article 48.4 of the Law of Ukraine "On the High Council of Justice" of December 21, 2016 No. 1798-VIII as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Bodies of Judicial Self-government" of October 16, 2019 No. 193-IX [Law No. 1798].

The Constitutional Court of Ukraine noted in the judgment that the reduction of the number of judges of the Supreme Court from two hundred to one hundred judges without a simultaneous change of its functions should be considered as an organisational tool which is regulated in accordance with the provisions of Article 125.2, Article 126 of the Constitution of Ukraine. The Court noted that the Verkhovna Rada of Ukraine as the only legislative body in Ukraine has the authority to change the number of judges of the Supreme Court if the relevant draft law is introduced by the President of Ukraine after consultation with the High Council of Justice. Failure to comply with this constitutional procedure does not conform to the principle of separation of state power provided for in Article 6.1 of the Constitution of Ukraine, contradicts the system of checks and balances arising from it, as well as constitutes an encroachment on the independence of the judiciary.

The Constitutional Court of Ukraine stressed that the implementation of the principle of the rule of law, the right of everyone to judicial protection is possible only with the actual observance of constitutional requirements for the independence of judges, which contain legal guarantees aimed at preventing any influence on judges and the judiciary.

The legal position of the Constitutional Court of Ukraine on the disputed norms in terms of constitutional guarantees of independence of judges is based on the previously stated legal positions of the Court (the first sentence of item 2.3 of the motivating part of the Judgment of June 24, 1999 No. 6-rp/99, the first sentence of the sixth paragraph of item 2.2.2 of the motivating part of the Judgment of June 3, 2013 No. 3-rp/2013, the second sentence of paragraph 6 of item 3.3.2, paragraphs twenty-seven, thirty-third, thirty-fourth of item 3.3.3 of the motivating part of the Judgment of December 4, 2018 No. 11-r/2018).

Confirming the previous legal positions, the Constitutional Court of Ukraine once again noted that the legislator cannot arbitrarily set or change the amount of a judge's remuneration, using his powers as an instrument of influencing the judiciary.

The Court also concluded that the change by the disputed provisions of the number and subjects of appointment of members of the High Qualification Commission of Judges of Ukraine without the introduction of an appropriate transitional period led to the suspension of constitutional functions for selection and evaluation of judges, the impossibility of the High Council of Justice to exercise its separate constitutional powers, as well as created significant obstacles to the functioning of effective justice and in some cases prevented the realisation of everyone's right to access to justice as a requirement of the rule of law principle.

Examining the disputed provisions, the Constitutional Court of Ukraine also noted that the systematic analysis of Article 24.3, Article 281 of Law No. 1798 as amended, paragraphs 9, 10 of Section II "Final and Transitional Provisions" of Law No. 193 gives grounds to conclude that the Commission on Integrity and Ethics is endowed with powers to oversee the activities of members of the High Council of Justice and judges of the Supreme Court, but such powers have no constitutional basis.

The Court also noted that the impugned provisions of Law No. 1798 as amended and Law No. 193 were inconsistent with Articles 126 and 131 of the Constitution of Ukraine, as the High Council of Justice had the exclusive power to prosecute judges of the Supreme Court, and these constitutional powers may not be delegated to other bodies or institutions.

In addition, the Constitutional Court of Ukraine stressed that a body or institution established under a constitutional body may not be endowed by law with a controlling function over that constitutional body.

The Court also stated in that judgment that a disciplinary case against a judge should be dealt with within a reasonable time and with procedures that fully guarantee his or her protection; disciplinary proceedings should not involve any evaluation of court judgments, as such judgments are subject to appellate review, and there should be filters for dealing with essentially unfounded complaints.

Thus, having analysed the disputed provisions of Law No. 1798 as amended, the Constitutional Court of Ukraine indicated that they do not provide a reasonable, commensurate (proportionate) and predictable procedure for disciplinary proceedings against a judge, fair and transparent disciplinary action against a judge.

Dissenting opinions were delivered by judges Oleksandr Kasminin, Vasyl Lemak, Oleh Pervomayskyi, Ihor Slidenko. The judges of the Constitutional Court of Ukraine expressed their own views on the structure of the Judgment and its arguments.

## **JUDGMENT No. 6-r/2020 of March 26, 2020**

The case upon the constitutional petition of 50 People's Deputies of Ukraine regarding the compliance of a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Iryna Zavhorodnia.

The Constitutional Court of Ukraine declared unconstitutional a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine [Code] in part, which provides that the provisions of Article 81 of the Law of Ukraine "On Prosecutor's Office" of October 14, 2014 No. 1697–VII as amended [Law] shall be applied in accordance with the procedure and amounts established by the Cabinet of Ministers of Ukraine, based on available financial resources of state and local budgets, as well as budgets of compulsory state social insurance funds.

The Constitutional Court of Ukraine noted that the independence of prosecutors is not a prerogative or a privilege granted, but a guarantee of fair, impartial and effective exercise of their powers (their activities).

One of the necessary preconditions for the independent activity of the prosecutor's office, impartial, objective performance of their functions by prosecutors is measures for their legal protection, adequate level of material and social security of prosecutors, which must be guaranteed to prevent pressure on their decisions. This can be realised only by determining the relevant conditions of the relevant law of

Ukraine for the functioning of the prosecutor's office and the funding system, including the regulation of the prosecutor's salary to ensure impartiality in exercising the powers established by the Constitution and laws of Ukraine.

Therefore, the salary of prosecutors, as an element of the organisation and procedure of the prosecutor's office operation within the meaning of Article 131<sup>1</sup> of the Basic Law of Ukraine, should be determined exclusively by law, and therefore the provisions of paragraph 26 of Section VI "Final and Transitional Provisions" of the Code in the part which stipulates that the norms and provisions of Article 81 of the Law are applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on available financial resources of state and local budgets, as well as budgets of compulsory state social insurance funds, is contrary to Article 131<sup>1.2</sup> of the Basic Law of Ukraine.

Legal certainty is fundamental to the rule of law; the state is obliged to comply with and apply in a predictable and consistent manner the laws it has enacted; legal certainty implies that the rules should be clear and precise, as well as aimed at ensuring constant predictability of situations and legal relations.

In the context of Article 8 of the Constitution of Ukraine, legal certainty ensures the adaptation of the subject of law enforcement to the normative conditions of legal reality and its confidence in its legal status, as well as protection against arbitrary state interference. Legal certainty must be understood through the following components: clarity, unambiguity of law; the right of a person in his or her actions to count on reasonable stability of the current legislation and the ability to predict the consequences of the application of legal norms (legitimate expectations).

In accordance with item 63.5 of section I of the Law of Ukraine "On Amendments to the Budget Code of Ukraine on Reform of Interbudgetary Relations" of December 28, 2014 No.79-VIII Section VI "Final and Transitional Provisions" of the Code is supplemented, in particular, by item 26 which establishes a different from the special regulations of the prosecutor's salary, enshrined in Article 81.1 of the Law, according to which the prosecutor's salary is regulated by law and may not be determined by other regulations. Having empowered the Cabinet of Ministers of Ukraine to establish the procedure and amount of the prosecutor's salary, the legislator introduced a normative regulation of the prosecutor's salary different from the provisions of Article 81 of the Law.

The Constitutional Court of Ukraine considers that a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Code, according to which the norms and provisions of Article 81 of the Law are applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on the available financial resources of state and local budgets and budgets of compulsory state social insurance funds, causes legal uncertainty in the application of these provisions of the Code and the Law, and therefore is contrary to the rule of law under Article 8.1 of the Constitution of Ukraine.

Dissenting opinion was delivered by judge Oleh Pervomayskyi. The judge of the Constitutional Court of Ukraine expressed his own view on certain aspects of the

organisation of the activity and functioning of the prosecutor's office, as well as the arguments given in the Judgment.

## **JUDGMENT No. 7-r/2020 of June 11, 2020**

The case upon the constitutional petition of 55 People's Deputies of Ukraine regarding the compliance of Article 375 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case - Halyna Yurovska.

The Constitutional Court of Ukraine found Article 375 of the Criminal Code of Ukraine [Code], which provided for criminal liability of a judge (judges) for adoption of the knowingly unjust sentence, decision, ruling or resolution.

The Constitutional Court of Ukraine proceeds from the fact that Article 375 of the Code does not establish criteria by which it is possible to determine which sentence, decision, ruling or resolution of a judge (judges) is "unjust", nor does it disclose the meaning of the words "knowingly unjust", which allows an ambiguous understanding of the composition of the crime, the qualification of which is carried out under this rule. The wording of the disposition of Article 375 of the Code allows for the possibility of its abuse in the conduct of pre-trial investigation actions that result in criminal prosecution of a judge only for the fact that he or she adopted a court decision, which, according to the subjective understanding of the investigator, prosecutor or any other person is "unjust" (in particular, in case of disagreement with this decision).

The Constitutional Court of Ukraine considers that:

- criminal law (Article 375 of the Code) must meet the requirements of legal certainty, clarity, ambiguity and predictability. This is a guarantee that a judge will administer justice on the basis of the rule of law and the effective exercise by everyone of the constitutional right to judicial protection;

- any criminal charge against a judge must be based on the provisions of criminal law that are sufficiently clear, understandable, unambiguous and predictable, provided that guarantees are established that ensure the independence of the judge in the administration of justice;

- the final court decision may not be reviewed, except in cases established by procedural law, its review by the relevant court, which excludes the possibility of assessing such a decision by the investigator, prosecutor in their actions that result in criminal prosecution of a judge;

- based on the principle of independence of judges guaranteed by the Constitution of Ukraine, the disputed provisions of the Code, which define acts that are crimes committed by a judge, must be formulated by the legislator so that the state body, any official were unable to use them as the manner of influencing the judge and interfering in the administration of justice by him or her. Constitutional provisions on the independence of judges are leveled due to the legal uncertainty of Article 375 of the Code.

The Constitutional Court of Ukraine concluded that Article 375 of the Code contradicts the principle of the rule of law, namely such an element of it as legal certainty, and does not comply with the principles of independence of judges, binding judicial decisions, and therefore contradicts Article 8.1, Article 126.2, Article 129.1, item 9 of Article 129.2 of the Constitution of Ukraine.

Dissenting opinions were delivered by judges Viktor Horodovenko, Oleksandr Kasminin, Vasyl Lemak, Oleksandr Lytvynov, Oleh Pervomayskyi, Serhiy Sas, Halyna Yurovska. The judges of the Constitutional Court of Ukraine expressed their own positions on the reasoning of the Judgment and the postponement of the expiration of the provisions declared unconstitutional.

### **JUDGMENT No. 9-r/2020 of August 28, 2020**

The case upon the constitutional petition of 51 People's Deputies of Ukraine on the constitutionality of the Decree of the President of Ukraine "On Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of Ukraine". Judge-Rapporteur in the case – Oleksandr Tupytskyi.

The Constitutional Court of Ukraine declared as such that does not comply with the Constitution of Ukraine (is unconstitutional) the Decree of the President of Ukraine "On Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of Ukraine" of April 16, 2015 No. 218/2015 (the Decree), whereby Artem Sytnyk was appointed as the Director of the National Anti-Corruption Bureau of Ukraine.

The Constitutional Court of Ukraine proceeded from the fact that the list of powers of the head of state established by the Constitution, in particular with regard to the appointment of officials of bodies determined by the Constitution, is exhaustive, and since the position of the Director of the National Anti-Corruption Bureau of Ukraine is not referred by the Basic Law of Ukraine to the positions appointed by the President of Ukraine, therefore, by issuing the Decree and acting on the implementation of the provisions of the Law "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014 No. 698–VII as amended (the Law), the President of Ukraine exceeded his constitutional powers.

The National Anti-Corruption Bureau of Ukraine is "a state law enforcement body" (law enforcement agency) that counteracts criminal corruption offenses by conducting pre-trial investigation in criminal proceedings, public and covert operative and investigative measures (Article 1.1, Article 16 of the Law, Article 38, Article 41.1, Article 216.5 of the Criminal Procedure Code of Ukraine). Thus, according to its status and functions, the National Anti-Corruption Bureau of Ukraine is not an advisory, consultative or other subsidiary body or service created by the President of Ukraine under Article 106.1.28 of the Constitution of Ukraine within the funds provided in the State Budget of Ukraine to exercise its powers. According to Article 24 of the Law, the financing of the National Anti-Corruption Bureau of Ukraine is carried out from the State Budget of Ukraine according to a separate budget, which also provides for the creation of a fund of operative and investigative (public and covert) actions.

Therefore the Decree contradicts the provisions of Article 106 of the Constitution, which provides the list of powers of the President of Ukraine, in particular Article 106.1.31, which states that the list of powers of the President determined by the Constitution is exhaustive.

The Constitutional Court of Ukraine proceeds from the fact that the National Anti-Corruption Bureau of Ukraine is a state law enforcement agency that is responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses within its jurisdiction, as well as preventing the commission of new ones; the National Anti-Corruption Bureau of Ukraine, as a law enforcement agency, is in fact an executive body, as it consists of central and territorial administrations, i.e. extends its powers to the entire territory of the state. Thus, the National Anti-Corruption Bureau of Ukraine has the characteristics of an executive body.

The Constitutional Court of Ukraine concluded that the appointment by the President of Ukraine of the head of a body that is functionally part of the executive branch will distort the system of checks and balances, disrupt the functional separation of powers and actually change the form of government provided by the Constitution of Ukraine. Thus, the Decree contradicts the requirements of Article 5.4, Article 6, Article 19.2, Article 116.9<sup>2</sup> of the Constitution of Ukraine.

Dissenting opinions were delivered by judges Vasyl Lemak and Oleh Pervomaiskyi. The judges of the Constitutional Court of Ukraine expressed their positions, in particular, regarding the power of the Constitutional Court of Ukraine to consider individual legal acts, actions in time of acts of appointment, as well as the "exhaustiveness" of constitutional powers of the President of Ukraine.

## **JUDGMENT No. 10-r/2020 of August 28, 2020**

The case upon the constitutional petition of the Supreme Court on the constitutionality of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures", the provisions of Articles 29.1 and 29.3 of the Law "On the State Budget of Ukraine for 2020", paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020"". Judge-Rapporteur in the case – Petro Filiuk.

The Constitutional Court of Ukraine declared such as do not comply with the Constitution of Ukraine (are unconstitutional) the provisions:

- of Articles 29.1, 29.3 of the Law "On the State Budget of Ukraine for 2020" of November 14, 2019 No. 294–IX as amended (Law No. 294–IX);

- of paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020"" of April 13, 2020 No. 553–IX (Law No. 553–IX).

The Constitutional Court of Ukraine emphasised that the abolition or amendment by the Law on the State Budget of Ukraine of the scope of rights and

guarantees and legislative regulation provided for in special laws contradicts Article 6, Article 19.2, Article 130 of the Constitution of Ukraine.

The Court also concluded that the setting of the maximum amount of salaries, cash benefits for employees, servants and officials of state institutions (including bodies of state power and other state bodies, local self-governments), provided for in April 2020 and for the period until the end of the month in which the quarantine established by the Cabinet of Ministers of Ukraine is canceled (Articles 29.1, 29.3 of the Law No. 294), is uncertain in time and does not provide predictability of application of these rules of law.

Having reviewed the disputed provisions of Article 29 of the Law No. 294 the Constitutional Court of Ukraine considered that salaries, cash benefits of employees, servants and officials of the legislative and judicial authorities are made dependent on the executive branch. Also, reaffirming previous legal positions, the Court stressed that the legislator cannot arbitrarily set or change the amount of a judge's remuneration, using his powers as an instrument to influence the judiciary (paragraphs seven, eight, subparagraph 4.1 of paragraph 4 of the reasoning part of the Judgment of March 11, 2020 No. 4-r/2020) and concluded that the limitation of judges' remuneration is an encroachment on the guarantees of judges' independence.

At the same time, the Constitutional Court of Ukraine noted that the restriction of the relevant payments is permissible under martial law or state of emergency. However, such restrictions should be introduced proportionately, with clear time limits and in strict accordance with the Constitution and laws of Ukraine. Such a restriction may also apply to judges, but after its expiration, the funds lost due to this restriction must be compensated by appropriate payments, as the judge's remuneration is an integral part of the judge's status defined by the Constitution of Ukraine.

The Court also stated that the principle of separation of powers (Article 6 of the Constitution of Ukraine) is clearly violated if the legislature temporarily suspends the execution of final court judgments, and ensuring the execution of the final court judgment is a positive obligation of the state, but the disputed provision of the Law No. 553 makes it impossible for the State Treasury of Ukraine to undisputedly write off costs of the state and local budgets on the basis of a court decision until January 1, 2021, which restricts a person's constitutional right to judicial protection.

Dissenting opinions were delivered by judges Vasyl Lemak, Oleh Pervomaiskyi, Ihor Slidenko. The judges of the Constitutional Court of Ukraine expressed their views on the admissibility of the restriction of human and citizen's rights and freedoms in the conditions of quarantine and the validity of the Judgment a whole.

## **JUDGMENT No. 11-r/2020 of September 16, 2020**

The case upon the constitutional petition of 50 People's Deputies of Ukraine on compliance of certain provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Oleksandr Lytvynov.

The Constitutional Court of Ukraine declared as such that do not comply with the Constitution of Ukraine (are unconstitutional) the provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014 No. 1698-VII as amended (the Law), namely the provisions of:

- Article 1.2 (on the establishment of the National Anti-Corruption Bureau of Ukraine);
- Articles 6.1, 7.9.2 (on granting the President of Ukraine the power to appoint and dismiss the Director of the National Anti-Corruption Bureau of Ukraine);
- Article 7.3.1 (on nomination by the President of Ukraine of three persons to the commission for the competition for the position of Director of the National Anti-Corruption Bureau of Ukraine);
- Article 26.6.2.2 (on the appointment by the President of Ukraine of one member of the External Control Commission);
- Article 31.2 (on approval by the President of Ukraine of the Regulations on the Public Control Council and on the procedure for its formation).

The constitutional provision on the division of power into legislative, executive and judicial as one of the fundamental provisions for the exercise of state power is not only designed to reflect the functional definition of each state body (its place in the system of checks and balances) and ensure independent performance of state functions and powers, but also to affirm the human and citizens' rights and freedoms and to ensure the stability of the constitutional order in the state. This constitutional provision is a substantial feature of the law-based state, therefore non-compliance with the principle of separation of powers threatens the state to fulfill its obligations under the Basic Law of Ukraine, especially under Article 3.2 of the Constitution of Ukraine.

Regarding the introduction of legislative regulation, which grants the President of Ukraine and the parliament the competence to decide on the formation of state bodies, the Constitutional Court of Ukraine stressed that the Basic Law of Ukraine "does not grant the Verkhovna Rada of Ukraine the right to determine in its acts the powers of the parliament the head of the state beyond the limits, established by constitutional norms"; "The Verkhovna Rada of Ukraine and the President of Ukraine in resolving issues of establishment, formation of bodies of state power and standardisation of their activities in accordance with Article 19.2 of the Basic Law of Ukraine are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution" (the second paragraph of sub-clause 3.5, the fourth paragraph of sub-clause 3.7 of clause 3 of the motivating part of the Judgment of June 13, 2019 No. 5-r/2019).

The provisions of the Constitution of Ukraine, which determine the scope and content of the powers of the President of Ukraine and the Verkhovna Rada of Ukraine, can be detailed only at the level of laws of Ukraine. However, such detailing cannot lead to distortion of the provisions of the Constitution of Ukraine or go beyond it.

Empowering the head of state and parliament at the legislative level with powers other than those provided for in the Basic Law of Ukraine is permissible only after the relevant amendments to the Constitution of Ukraine have been introduced.

The President of Ukraine may establish, within the funds provided for in the State Budget of Ukraine, advisory, consultative and other subsidiary bodies and services for the exercise of his powers (Article 106.1.28 of the Constitution of Ukraine).

The list of powers of the head of state established in the Constitution of Ukraine, including the powers to appoint officials of bodies defined by the Constitution of Ukraine, is exhaustive (paragraph fourteen of subparagraph 2.2 of paragraph 2 of the motivating part of the Judgment of the Constitutional Court of Ukraine of August 28, 2020 No. 9-r/2020)

The Constitutional Court of Ukraine considers that the powers specified in the disputed provisions of the Law do not belong to the exhaustive list of powers of the President of Ukraine defined by the Basic Law of Ukraine. Thus, the Verkhovna Rada of Ukraine, having introduced the legislative regulation provided for in Article 1.2, Article 6.1 (on granting the President of Ukraine the power to appoint and dismiss the Director of the National Anti-Corruption Bureau of Ukraine), Article 7.3.1, Article 7.9.2, Article 26.6.2.2 (on the appointment by the President of Ukraine of one member of the External Control Commission), Article 31.2 of the Law, expanded the powers of the head of state and thus went beyond the powers defined by the Constitution of Ukraine.

Given that the National Anti-Corruption Bureau of Ukraine has the characteristics of an executive body, and from the date of the Constitutional Court of Ukraine's Judgment of August 28, 2020 No. 9-r/2020 the Law was not amended, the disputed provisions of the Law, which enshrine the powers of the President to establish this law enforcement body, as well as to appoint its Director and resolve other issues related to the functioning of the National Anti-Corruption Bureau of Ukraine, make the interference in the competence of the Cabinet of Ministers possible.

The Constitutional Court of Ukraine considers that these provisions of the Law cause a violation of the balance in the system of state power (system of checks and balances) and, as a consequence, weaken the constitutional guarantees of human and citizen's rights and freedoms, as well as negatively affect the stability of the constitutional order.

Dissenting opinions were delivered by judges Viktor Kolisnyk, Vasyl Lemak. The judges of the Constitutional Court of Ukraine expressed their positions on the legal nature of the National Anti-Corruption Bureau of Ukraine, as well as on the status of the President of Ukraine and the scope of his powers in the field of national security.

## **JUDGMENT No. 13-r/2020 of October 27, 2020**

The case upon the constitutional petition of 47 People's Deputies of Ukraine on the conformity of specific provisions of the Law of Ukraine "On Prevention of Corruption", the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Ihor Slidenko.

The Constitutional Court of Ukraine declared as such that that do not comply with the Constitution of Ukraine (are unconstitutional) the provisions of:

- Articles 11.1.6, 11.1.8, 12.1.1, 12.1.2, 12.1.6, 12.1.7, 12.1.8, 12.1.9, 12.1.10, 12.1.10<sup>1</sup>, 12.1.2, 12.1.12<sup>1</sup>, 13.2, 13<sup>1</sup>.2, 35, 47.1.2, 47.1.3, 48, 49, 50, 51, 52.2, 52.3, and 65 of the Law of Ukraine "On Prevention of Corruption" of October 14, 2014 No. 1700–VII as amended (Law No. 1700–VII), which provided for the powers of the National Agency for the Prevention of Corruption in terms of control functions (control) of the executive branch over the judiciary, namely: the powers and rights of the National Agency for the Prevention of Corruption, authorised persons and authorised units for the prevention and detection of corruption; conflict of interest arising in the activities of certain categories of persons authorised to perform the functions of state or local self-government, accounting and publication of declarations, control and verification of declarations, establishing the timeliness of declarations, full verification of declarations, monitoring the lifestyle of declaring subjects financial control, liability for corruption or corruption-related offenses;

- Article 366<sup>1</sup> of the Criminal Code of Ukraine (CC), which provided for criminal liability for submission by the declaring subject of knowingly unreliable information in the declaration of a person authorised to perform the functions of state or local self-government provided by law, or intentional failure of the declaring subject to submit the said declaration.

The Constitutional Court of Ukraine noted that the institutional independence of the judiciary is a prerequisite for the independence and impartiality of each individual judge, whereas the independence, impartiality of each of them is a condition for ensuring the institutional independence of the judiciary.

In resolving this case, the Constitutional Court of Ukraine takes into account the fact that the independence of judges from other bodies state power is crucial in any democracy. The implementation of the principle of independence of the judiciary, and hence judges, is primarily its separation from other branches of government, which means the formation of an independent, autonomous and self-governing judicial system outside the legislative and executive branches of power.

The Constitutional Court of Ukraine stated that the National Agency for Prevention of Corruption, as an executive body, exercises control over the constitutionally established institutions, which are the courts and the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine drew the legislator's attention to the fact that when introducing the powers and rights of the National Agency for Prevention of Corruption and other executive bodies concerning judges who have a special status and belong to the judiciary, it should distinguish between judges of the judiciary and judges of the Constitutional Court of Ukraine, taking into account the principle of independence of the judiciary and the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine considers that the establishment of criminal liability for declaring knowingly inaccurate information in a declaration, as well as the intentional failure of the subject to submit declaration is an excessive punishment for committing these offenses. The negative consequences suffered by a

person brought to criminal liability for committing crimes under Article 366<sup>1</sup> of the CC are disproportionate to the damage that has occurred or could have occurred in the event of the commission of the relevant acts.

The Constitutional Court of Ukraine noted that the legislator did not observe the principles of fairness and proportionality as elements of the rule of law, and therefore Article 366<sup>1</sup> of the CC contradicts Article 8.1 of the Basic Law of Ukraine.

Dissenting opinions were delivered by judges Serhiy Holovatyi, Viktor Kolisnyk, Vasyl Lemak, Oleh Pervomaiskyi. Judges of the Constitutional Court of Ukraine expressed remarks and their own opinions on the validity of the motivating part of the Judgment.

## **JUDGMENTS UPON CONSTITUTIONAL COMPLAINTS**

In 2020, the Constitutional Court of Ukraine adopted 11 decisions based on the results of consideration of cases upon constitutional complaints (3 of them - by the Grand Chamber, 8 - by the Senate).

### **JUDGMENT No. 1-r(I)/2020 of January 22, 2020 (the First Senate)**

The case upon the constitutional complaint of Vyacheslav Peskach regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the second sentence of Article 42.4 of the Law of Ukraine "On the Constitutional Court of Ukraine". Judge-Rapporteur – Oleksandr Lytvynov.

The judgment declares as complying with the Constitution of Ukraine (constitutional), the provisions of the second sentence of Article 42.4 of the Law of Ukraine "On the Constitutional Court of Ukraine" [Law], according to which information on inquiries regarding the case file pending before the Constitutional Court of Ukraine may not be provided.

The Constitutional Court of Ukraine proceeded from the fact that a person's right to access information guaranteed by Article 34 of the Constitution of Ukraine is not absolute and may be subject to restrictions. Such restrictions should be exceptions provided by law, pursue one or more legitimate aims and be necessary in a democratic society. If the right to access information is restricted, the legislator is obliged to introduce such legal regulation that will allow to optimally achieve a legitimate goal with minimal interference in the exercise of this right and not to violate the essential content of such a right.

The Constitutional Court of Ukraine concluded that the restriction established in the second sentence of Article 42.4 of the Law on non-providing information on requests for case file pending before the Constitutional Court of Ukraine is based on the law, pursues such a legitimate aim as, in particular, the right to non-interference in private and family life, guaranteed by Article 32 of the Constitution of Ukraine, as well as ensuring the constitutional principle of independence of the Constitutional Court of Ukraine in the exercise of its jurisdictional powers in the form of constitutional proceedings in cases upon constitutional petitions, constitutional appeals, constitutional complaints, and is necessary in a democratic society. This legislative restriction is not censorship in the field of constitutional proceedings, as it is temporary and ends at the same time as the Constitutional Court of Ukraine concludes the consideration of the case.

A dissenting opinion was delivered by judge Oleksandr Lytvynov, who provided arguments on the unconstitutionality of the disputed provisions of the Law.

## **JUDGMENT No. 5-r/2020 of March 17, 2020 (the Grand Chamber)**

The case upon the constitutional complaint of Viktor Tatkov regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 190.5, paragraph 1 of Article 309.1, Article 309.3 of the Code of Criminal Procedure of Ukraine. Judge-Rapporteur in the case – Oleksandr Lytvynov.

The judgment declares as complying with the Constitution of Ukraine (constitutional) the provisions of Article 190.5, paragraph 1 of Article 309.1, Article 309.3 of the Code of Criminal Procedure of Ukraine [Code] on the prohibition of appealing against the ruling of an investigating judge on a detention permission for the purpose of bringing to court.

The Constitutional Court of Ukraine proceeded from the fact that the right to an appellate review of a case, provided for in paragraph 8 of Article 129.2 of the Constitution of Ukraine, is a guaranteed right to a review in a court of appeal of a case considered by a court of first instance on the merits. At the same time, this constitutional provision does not deprive the legislator of the power to provide for the possibility of appealing any decision adopted by a court during the consideration of a case but not resolving it on the merits, or to establish restrictions or prohibitions on appealing certain procedural court decisions, by which the case is not resolved on the merits.

The Constitutional Court of Ukraine drew attention to the fact that the established restrictions or prohibition on appeal of certain procedural court decisions, which do not resolve the case on the merits, may not be arbitrary, but must be applied for legitimate purposes, be commensurate (proportionate) and reasonable, must not violate the essence of the constitutional right of a person to judicial protection.

The legislative prohibition on appealing the ruling of the investigating judge on permission to detain for the purpose of bringing to the court does not deprive the suspect, accused of the right to judicial protection, as the provisions of the Code not only establish judicial control over his rights and freedoms when deciding on the application of precautionary measures, extension in time or change of the measure of restraint, but also provide for another mechanism of judicial protection, which the suspect, the accused may use - the possibility of filing objections against the ruling of the investigating judge on permission to detain for the purpose of bringing to the court during the preparatory proceedings in court. In addition, the effect of the ruling on permission to detain for the purpose of bringing to the court directly depends, in particular, on the fact of cessation of illegal conduct of the suspect, accused, because such a ruling loses its legal force from the moment the suspect appears before the investigating judge, court (paragraphs 1, 2<sup>1</sup> of Article 190.3 of the Code).

According to the Constitutional Court of Ukraine, the normative regulation established by the disputed provisions of the Code is not arbitrary, pursues a legitimate aim and does not violate the essence of the constitutional right of a person to judicial protection.

The Constitutional Court of Ukraine also stressed that the equality of participants in criminal proceedings before the law means giving them equal rights

and equal responsibilities to participate in criminal proceedings and defend their position. In this case, the concepts of "equal rights", "equal responsibilities" can not be equated with the concepts of "identical rights", "identical responsibilities". Rights or responsibilities may vary and depend on the status and role of the party to the criminal proceedings (prosecutor, victim, investigator, accused, defense counsel, civil plaintiff, civil defendant, etc.). Thus, the equality of rights and responsibilities is that each of the participants in the criminal proceedings is endowed with rights and has responsibilities defined by law for his or her procedural position.

The Constitutional Court of Ukraine believes that the procedural rights and obligations of participants in criminal proceedings with different procedural status are different, due to the different procedural functions that must be exercised during criminal proceedings by subjects with the appropriate procedural status.

As can be seen from the disputed provisions of the Code, a ruling on refusal on permission to detain for the purpose of bringing to the court may be appealed in the manner prescribed by the Code, and a ruling on permission to detain for the purpose of bringing to the court is not subject to appeal (instead, objections to such a ruling may be filed during preparatory proceedings in court).

The Constitutional Court of Ukraine concluded that the impossibility of appealing an investigating judge's ruling to permit detention for the purpose of bringing to court is a reasonable restriction on the principle of equality of participants in criminal proceedings before the law and the court, which meets the objectives of criminal proceedings and does not violate constitutional human rights. By establishing the disputed regulations by the provisions of the Code, the legislator ensured the achievement of a fair balance between the procedural rights and obligations of the parties to the prosecution and defense. Such regulation provides an opportunity for the prosecution and defense parties to prove their position and most effectively exercise their procedural rights and responsibilities in criminal proceedings.

## **JUDGMENT No. 2-r(II)/2020 of April 15, 2020 (the Second Senate)**

The case upon constitutional complaints of Nadiia Melnychuk, Liliia Hryhorieva and Maryna Klimenko regarding the compliance of the provision of paragraph 28.1 of Section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Volodymyr Moisyk.

The judgment declared inconsistent with the Constitution of Ukraine (unconstitutional), the provision of paragraph 28.1 of Section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine" of March 27, 2014 No. 1166-VII [Law], by which from the Law of Ukraine "On the Judiciary and the Status of Judges" of July 7, 2010 No. 2453-VI in the wording until being amended by the Law of Ukraine "On Ensuring the Right to a Fair Court" of February 12, 2015 No. 192-VIII, Article 136 is eliminated, paragraph

one of which provided for the right of a retired judge to receive severance pay in the amount of 10 monthly salaries for the last position.

The Constitutional Court of Ukraine stressed that one of the guarantees of the independence of judges and retired judges is their adequate material and social security, which should guarantee the administration of fair, independent, impartial justice, and that guarantees of the independence of judges, including measures to its material and social security, apply to all judges and may not be repealed or reduced by other regulations.

The Constitutional Court of Ukraine stated that the transitional period between the publication of the Law and the entry into force of the provision of paragraph 28.1 of Section II of the Law (less than one day) was clearly insufficient for legal subjects (judges who at the time of entry into force of the Law had the right to resign, but as of April 1, 2014 have not yet used it) were able to adapt to legislative innovations and adjust their actions to exercise the right to resign and, accordingly, receive severance pay in the amount prescribed by law before amending the Law.

The Constitutional Court of Ukraine concluded that the provision of paragraph 28.1 of Section II of the Law contradicts Article 8.1 of the Constitution of Ukraine in view of its inconsistency with the rule of law in respect of legitimate expectations.

Dissenting opinions were delivered by judges Viktor Horodovenko, Vasyl Lemak, Oleh Pervomayskyi, in which the judges of the Constitutional Court of Ukraine provided their own opinions, remarks and additional arguments regarding the Judgment, its motivating part and the circumstances of the case.

### **JUDGMENT No. 3-r(I)/2020 of April 22, 2020 (the First Senate)**

The case upon the constitutional complaint of Serhii Zinchenko regarding the compliance of the provisions of paragraph 3 of Article 97.1 of the Law of Ukraine "On the National Police" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Viktor Kolisnyk.

The judgment declares as consistent with the Constitution of Ukraine (constitutional), the provisions of paragraph 3 of Article 97.1 of the Law of Ukraine "On National Police" of July 2, 2015 No. 580-VIII as amended [Law], according to which one-time financial assistance in case of death, the determination of a police officer's disability is a social benefit guaranteed by state assistance, which is appointed and paid to persons who are entitled to receive it by law, in the case of "determining the police officer's disability resulting from injury (contusion, trauma or mutilation) received in the performance of official duties related to the performance of duties and the main tasks of the police, or participation in the anti-terrorist operation, in the implementation of measures to ensure national security and defense, repel and deter armed aggression of the Russian Federation in Donetsk and Luhansk regions, being directly in the districts and during the implementation of these measures, protection of independence, sovereignty and territorial integrity of Ukraine,

during six months after his release from the police for the reasons set out in this paragraph".

The Constitutional Court of Ukraine noted that the payment of one-time financial assistance in the case of death of a police officer and loss of his ability to work is one of the measures of social protection of a police officer.

Having examined the various grounds and conditions for the payment of one-time financial assistance provided by Article 97.1 of the Law, the Constitutional Court of Ukraine stressed that these grounds and conditions cannot be considered in the understanding of Articles 24.1 and 24.2 of the Constitution of Ukraine as the introduction of discriminatory differences in the status of a police officer, who acquires the right to receive one-time financial assistance, as its size is primarily due to the severity of the negative consequences for the life and health of the police officer.

The one-time financial assistance provided for in paragraph 3 of Article 97.1 of the Law is a guaranteed social benefit, granted to a police officer after dismissal from the police in case of disability due to injury (contusion, trauma or mutilation) received in the performance of official duties. In circumstances where a police officer has suffered an injury (contusion, trauma or mutilation) that does not result in his dismissal from the police due to illness and subsequent disability, Article 97.1 of the Law provides for other grounds on which a person may exercise the right to receive a one-time financial assistance.

The Constitutional Court of Ukraine concluded that the provisions of paragraph 3 of Article 97.1 of the Law on the grounds and conditions for payment of one-time financial assistance in case a police officer is assigned a disability within six months of his or her dismissal from the police for the reasons specified in this paragraph shall not contain signs of discrimination. The grounds and conditions for the payment of one-time financial assistance to police officers due to partial incapacity for work without a definition of disability and without dismissal are provided by the provisions of paragraph 5 of Article 97.1 of the Law. According to the provisions of Article 77.1 of the Law, the onset of an illness incompatible with serving in the police is the basis for dismissal of a person from service in the police, in particular in accordance with paragraph 2 of Article 77.1 of the Law. At the same time, paragraph 5 of Article 97.1 of the Law does not provide for the dismissal of a police officer from the police service with the definition of his disability as a condition for the payment of a financial assistance in accordance with this paragraph.

The Constitutional Court of Ukraine also found that the state has a wide range of discretionary powers to introduce or change one-time financial assistance as a type of social benefits that are not explicitly defined and not specified in the Constitution of Ukraine.

The Constitutional Court of Ukraine concluded that the right to the appointment and payment of one-time financial assistance in case of a police officer's disability, resulting from injury (contusion, trauma or mutilation) received in the performance of official duties related to the performance of duties and the main tasks of the police, or participation in the anti-terrorist operation, in the implementation of measures to

ensure national security and defense, repel and deter armed aggression of the Russian Federation in Donetsk and Luhansk regions, being directly in the districts and during the implementation of these measures, protection of independence, sovereignty and territorial integrity of Ukraine, provided by the disputed provisions of the Law, is not a right of a police officer established by the Constitution of Ukraine. Therefore, the Verkhovna Rada of Ukraine, as the sole legislature, has the authority to determine at its own discretion the specific grounds and special conditions for the appointment and payment of one-time financial assistance to police officers, including in the case of dismissal due to disability, as defined by paragraph 3 of Article 97.1 of the Law.

### **JUDGMENT No. 4-r/2020 of June 17, 2020 (the Second Senate)**

The case upon the constitutional complaint of Viacheslav Peskach concerning the compliance of certain provisions of Articles 307.3, 309.3 of the Code of Criminal Procedure of Ukraine with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Vasyl Lemak.

The judgment declared inconsistent with the Constitution of Ukraine (unconstitutional), the provisions of Article 307.3 of the Criminal Procedure Code of Ukraine [Code] regarding the prohibition of appealing the ruling of an investigating judge based on the consideration of a complaint against inaction of the investigator, prosecutor, which means not entering information to the Unified Register of Pre-Trial Investigations after receiving an application, notification of a criminal offense, and terminated constitutional proceedings on the compliance with the Constitution of Ukraine (constitutionality) of Article 309.3 of the Code of Criminal Procedure of Ukraine pursuant to Article 62.4 of the Law of Ukraine "On the Constitutional Court of Ukraine" – inadmissibility of the constitutional complaint.

The Constitutional Court of Ukraine pointed out that the right to judicial protection as a guarantee of protection and restoration of the system of rights and freedoms is especially evident when access to court for a person is prevented by the inaction of the bodies of state power. Applying to the authorised state bodies with a statement, notification of a criminal offense, the person is expected to be within the proper legal procedure, ensuring which is one of the tasks of criminal proceedings (Article 2 of the Code). Insufficient judicial guarantees against arbitrariness in the issue of initiating criminal proceedings hinder the protection of violated human rights, in particular due to the impossibility of judicial protection provided for in Articles 55.1, 55.2 of the Constitution of Ukraine.

According to the Constitutional Court of Ukraine, the scope of judicial protection established by the legislator regarding the assessment of inaction of authorised state bodies should provide for the effectiveness of judicial control, which should be ensured during the consideration of relevant issues in at least two courts: the legislator should introduce such a scope of judicial control over the inaction of investigator or prosecutor, which envisages entering information about the criminal offense in the Unified Register of Pre-Trial Investigations after receipt of the application, notification of the criminal offense, which would allow effective judicial control over relevant issues and, if justified, give the person the opportunity to initiate criminal proceedings, and thus give him real access to judicial protection.

The Constitutional Court of Ukraine concluded that the provisions of Article 307.3 of the Code regarding the prohibition of appealing the ruling of an investigating judge based on the results of consideration of a complaint about inaction of an investigator or prosecutor, which consists in not entering information on criminal offense in Unified Register of Pre-Trial Investigations after receipt of the application, is a restriction of the constitutional right to judicial protection in relation to guarantees of appellate review of the case.

### **JUDGMENT No. 5-r/2020 of June 18, 2020 (the Second Senate)**

The case upon the constitutional complaint of a citizen of Ukraine Olha Levchenko regarding the compliance of the provisions of paragraph 5 of section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No. 213-VIII with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Serhiy Holovatyi.

The judgment declared inconsistent with the Constitution of Ukraine (unconstitutional), the provision of paragraph 5 of section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pensions" of March 2, 2015 No. 213-VIII [Law], according to which "In case of non-adoption by June 1, 2015 of the law on the appointment of all pensions, including special, on general grounds from June 1, 2015 the rules on pensions of persons whose pensions are granted in accordance with the laws of Ukraine "On Civil Service", "On the Prosecutor's Office", "On the Status of the People's Deputy of Ukraine", "On the Cabinet of Ministers of Ukraine", "On Forensic Examination", "On the National Bank of Ukraine", "On Service in Local Self-Governments", "On the Diplomatic Service", Tax and Customs Codes of Ukraine, Regulations on the Assistant Consultant of the People's Deputy of Ukraine shall be abolished".

The Constitutional Court of Ukraine noted that the legal structure applied by the legislator in the provision of paragraph 5 of section III "Final Provisions" of the Law "in case of non-adoption by June 1, 2015 of the law on the appointment of all pensions, including special ones, on general grounds as of June 1, 2015, the norms on pension provision for persons to whom pensions are granted in accordance with the laws of Ukraine are abolished, is very contradictory and ambiguous. First, the introduction by the legislator of the formula "in case of non-adoption <...> of the law <...> the norms <...> are abolished" had the following consequences: a) there is a possibility that in place of replacing the rules on pensions for specific categories of persons (including prosecutors, judges, civil servants, diplomats, etc.) the legislator will adopt a "new law" that will regulate the appointment of pensions to an indefinite number of people - all; b) at the same time there was a probability that this would not happen (if the legislator does not adopt a "new law"); c) there is a possibility that there will be no special pensions in Ukraine for some time (if the legislator adopts such a "new law" that will introduce the procedure for assigning "all pensions on general grounds) at the same time there was a probability that this would not happen (if the legislator does not adopt a "new law").

Secondly, the abolition of the norms on pension provision for persons to whom pensions are granted in accordance with ten laws and one by-law provided for by this

construction was made dependent on whether or not the legislator (before June 1, 2015) all pensions, including special ones". Such a provision, giving the legislator the freedom to choose - to adopt or not to adopt a "new law" on pensions, created conditions where each of the options would lead to different (or even opposite) consequences for citizens, leaving them for a long time in uncertainty (state of uncertainty) regarding the possible consequences for themselves.

Thirdly, the legislator's application of the formula "law on the appointment of all pensions, including special ones" created the possibility that in the "new law" the institution of "special pensions" will still be preserved.

Fourthly, related to the provision of paragraph 5 of section III "Final Provisions" of the Law is the norm of this law, according to which the Cabinet of Ministers of Ukraine had within three months from the date of entry into force of the Law to adopt bylaws for its implementation and submit to the Verkhovna Rada By May 1, 2015, the Council of Ukraine will draft a law on the appointment of all pensions, including special pensions (except for pensions granted to servicemen and researchers), on general grounds (paragraphs two and three of item 4 of section III "Final Provisions" of the Law). As a result of the introduction of such a rule, the situation has become even more confusing, as the likelihood of adoption by the legislator by June 1, 2015, the "Law on Assignment of All Pensions, Including Special Pensions" (as provided for in paragraph 5 of Section III " Final Provisions" of the Law) became dependent on the actions not only of the legislator but also of the Cabinet of Ministers of Ukraine. As a result, citizens were even less able to foresee the legal consequences of such two provisions of Section III of the Final Provisions of the Law.

Fifthly, the entry into force of paragraph 5 of Section III "Final Provisions" of the Law led to a number of amendments to two special laws on the Prosecutor's Office (Law of Ukraine "On the Prosecutor's Office" of November 5, 1991 No. 1789-XII as amended, Law of Ukraine "On the Prosecutor's Office"of 14 October 2014 No. 1697 – VII as amended), but this provision does not provide for a clear indication of which specific provisions of either of these two laws apply to the repeal from 1 June 2015.

Sixthly, the provision of paragraph 5 of section III "Final Provisions" of the Law does not specify which provisions of other laws and one bylaw, the list of which is contained in this provision, "are repealed from June 1, 2015."

The Constitutional Court of Ukraine stated that the provision of paragraph 5 of section III "Final Provisions" of the Law does not meet the requirement of predictability as an integral element of the principle of legal certainty, and therefore contradicts the rule of law enshrined in part one of Article 8 of the Constitution.

The Constitutional Court of Ukraine also noted that the construction used by the legislator in the provision of paragraph 5 of section III "Final Provisions" of the Law is generally favourable for a certain category of citizens (including specific - prosecutors) legitimate expectations and that the legislator will adopt by June 1, 2015 year "new law" on the appointment of all pensions, and that it will address the issue of "special pensions", the order of their appointment and their size. If the legislator did just that, the probability of which was allowed by the provision of paragraph 5 of section III "Final Provisions" of the Law, there would be no situation in which we could talk about "abolition from June 1, 2015 of the norms on pensions" carried out in accordance with the number of regulations specified in this regulation. In addition,

the provisions of paragraphs two and three of clause 4 of section III "Final Provisions" of the Law, which are directly related to the provision of paragraph 5 of the same section, created additional grounds for legitimate (legitimate) expectations of citizens that the Cabinet of Ministers will prepare and submit consideration of the Verkhovna Rada of Ukraine until May 1, 2015 of the draft law on the appointment of all pensions, including special ones. However, neither that (the Cabinet of Ministers of Ukraine did not submit such a bill to the Verkhovna Rada of Ukraine) nor another (the Verkhovna Rada of Ukraine accordingly did not adopt such a bill by June 1, 2015) did not happen. In this situation, the prescription of paragraph 5 of section III "Final Provisions" of the Law caused a certain category of citizens (specifically - prosecutors) to feel the collapse of legitimate expectations, which is incompatible with the requirement of legal certainty as an integral part of the rule of law.

The Constitutional Court of Ukraine concluded that the provision of paragraph 5 of section III "Final Provisions" of the Law does not meet the requirements of legal certainty as a component of the principle of the rule of law established by Article 8.1 of the Constitution.

Serhiy Holovaty's concurring opinion and Oleksandr Kasminin's dissenting opinion were added to the Judgment. Judges of the Constitutional Court of Ukraine, agreeing with the Judgment, provided their own opinions on certain conclusions contained in the Judgment and their substantiation, as well as on the motivating part of the Judgment.

#### **JUDGMENT No. 6-r(II)/2020 of June 24, 2020 (the Second Senate)**

The case upon the constitutional complaints of Eduard Kariakin and the "Eco-Coal Trading House of Ukraine" LLC regarding the compliance of the provisions of Article 79.1 of the Law of Ukraine "On Banks and Banking" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Viktor Horodovenko.

The judgment declared inconsistent with the Constitution of Ukraine (unconstitutional), a separate provision of Article 79.1 of the Law of Ukraine "On Banks and Banking" of December 7, 2000 No. 2121-III as amended [Law], namely "which are covered by supervisory activities of the National Bank of Ukraine".

The Constitutional Court of Ukraine proceeded from the fact that the guarantee by the provision of Article 55.2 of the Constitution of Ukraine to everyone the right of access to court for the purpose of appealing against decisions, actions or omissions of subjects of power is required by the rule of law principle. Such access does not mean automatic illegality of these decisions, actions or omissions, but is aimed at judicial review of their legality and legitimacy, which not only provides effective protection of the rights and freedoms of every person affected by the illegal activities of government, but also promotes maintaining law and order in general by identifying and eliminating illegitimate manifestations in such activities.

The Constitutional Court of Ukraine noted that the legislation should avoid prohibitions or restrictions on the exercise by each person of the right to appeal in court against decisions, actions or omissions of subjects of power, including by

defining at the legislative level an exhaustive list of persons entitled to such appeal, because not including a person in this list makes it impossible for him or her to prove in court his or her conviction in the need to protect his or her violated rights, freedoms by these decisions, actions or omissions. It is the presence of such a belief in each person is an essential feature of his or her right to go to court to appeal against decisions, actions or omissions of the subjects of power, and therefore a necessary prerequisite for the exercise of this right.

Having analysed the functions and powers of the National Bank of Ukraine defined by law, the Constitutional Court of Ukraine stressed that the National Bank of Ukraine may make decisions concerning an indefinite range of individuals or legal entities and may violate or otherwise oppress their rights, freedoms and legitimate interests. In view of the provisions of Articles 2 and 72 of the Law concerning "substantial participation" and "persons covered by the supervisory activities of the National Bank of Ukraine", the Constitutional Court of Ukraine stated that provision of Article 79.1 of the Law establishes an exhaustive list of persons entitled to appeal against decisions, actions or omissions of the National Bank of Ukraine, its servants and officials, and such a list includes a bank or other persons covered by the supervisory activities of the National Bank of Ukraine, which are the owners of significant participation in the bank (in particular, those who directly and/or indirectly, independently or jointly with other persons own 10 percent or more of the shares of the authorised capital of the legal entity) and members of banking groups.

In this way, access to court is not possible for persons not included in this list, in particular shareholders of the bank who are not owners of significant participation in the bank, which discriminates against them on property grounds and, as a result of legislative regulation, deprives them of the opportunity to prove in court their conviction in the need to protect their rights, legitimate interests violated by decisions, actions or omissions of the subject of power. Thus, contrary to the principle of the rule of law, the right of this category of persons to access to court and further effective legal protection of their rights and legitimate interests is leveled.

The Constitutional Court of Ukraine concluded that a separate provision of Article 79.1 of the Law, namely "covered by the supervisory activities of the National Bank of Ukraine" contradicts Articles 8, Article 24.1, 24.2, 55.1 and 55.2 of the Constitution of Ukraine.

### **JUDGMENT No. 7-r(I)/2020 of July 1, 2020 (the First Senate)**

The case upon the constitutional complaint of the "Ukrkava" LLC regarding the compliance of the provisions of Article 88.1 of the Law of Ukraine "On Notary" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Oleksandr Lytvynov.

The judgment declares as consistent with the Constitution of Ukraine (constitutional) the provisions of Article 88.1 of the Law of Ukraine "On Notary" of September 2, 1993 No. 3425–XII [Law], according to which the notary makes writs of execution, if the submitted documents confirm the indisputable debt or other liability of the debtor to the debt collector and provided that no more than three years

have elapsed since the date of the right of claim, and in relations between enterprises, institutions and organizations - no more than one year.

The Constitutional Court of Ukraine stated that the terms provided for by the provisions of Article 88.1 of the Law for a notary to execute a writ of execution are different depending on the circle of participants in legal relations: in relations between legal entities the term is reduced compared to the term applied in relations between individuals.

By establishing the order of normative regulation of the notary's activity in terms of determining the terms within which the notary may make a writ of execution, the legislator introduced a clear differentiation depending on the subject composition of the participants in legal relations.

The Constitutional Court of Ukraine noted that the regulation provided by the disputed provisions of the Law is the exercise by the Verkhovna Rada of Ukraine of exclusive powers to determine the organisation and activities, including notary, as set out in paragraph 14 of Article 92.1 of the Constitution of Ukraine.

The Constitutional Court of Ukraine has concluded that the provisions of Article 88.1 of the Law are clear, understandable and unambiguous, i.e. such normative regulation excludes the possibility of its arbitrary interpretation, therefore the application of the disputed provisions of the Law by persons (bodies) does not lead to unlawful deprivation of property rights.

A dissenting opinion was delivered by judge Oleksandr Lytvynov. Citing the relevant arguments, the judge drew attention to the need to apply the provisions of Article 89.3 of the Law of Ukraine "On the Constitutional Court of Ukraine".

## **JUDGMENT No. 8-r/2020 of July 14, 2020 (the Grand Chamber)**

The case upon the constitutional complaint of Andrii Dermenzy regarding the compliance of the provisions of Articles 23.1 and 23.2 of the Law of Ukraine "On Mortgage" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Oleksandr Lytvynov.

The judgment found the provisions of Article 23.1 of the Law of Ukraine "On Mortgage" of June 5, 2003 No. 898-IV to comply with the Constitution of Ukraine (constitutional) and terminated the constitutional proceedings in the case of compliance with the Constitution of Ukraine (constitutionality) of Article 23.2 of the Law of Ukraine "On Mortgage" of June 5, 2003 No. 898-IV [Law] on the basis of Article 62.4 of the Law of Ukraine "On the Constitutional Court of Ukraine" - inadmissibility of the constitutional complaint.

Article 23 of the Law stipulates that in the case of transfer of ownership (economic management rights) for a mortgage from the mortgagor to another person, including by way of inheritance or succession, the mortgage is valid for the purchaser of the real estate, even if he or she has not been informed about the encumbrance of the property with a mortgage (part one); the person to whom the ownership of the mortgage has passed acquires the status of a mortgagor and has all his or her rights

and bears all his or her obligations under the mortgage agreement to the extent and on the conditions that existed before the acquisition of ownership of the mortgage (part two).

The Constitutional Court of Ukraine has concluded that the provisions of Article 23.1 of the Law do not violate a reasonable balance between the rights and interests of the mortgagee (creditor) and the mortgagor (purchaser of mortgage property). In addition, the fact of awareness of the purchaser of mortgaged property about the stay of real estate in the mortgage is not significant, because the alienation of the subject of the mortgage by the mortgagor with or without the consent of the mortgagee does not terminate the mortgage. At the same time, the purchaser of mortgage property, who has not been informed that the real estate is the subject of the mortgage, has sufficient legal remedies under current legislation of Ukraine in case of violation of his constitutional property rights, as well as the law when making a transaction.

The Constitutional Court of Ukraine pointed out that the consequences of the transfer of ownership of the mortgage to a third party, provided by the provisions of Article 23.1 of the Law, do not directly relate to the deprivation of the mortgagor (purchaser of mortgage property) of ownership of the mortgage or its forcible alienation in connection with the application for foreclosure on the mortgage.

#### **JUDGMENT No. 8-r(I)/2020 of July 22, 2020 (the First Senate)**

The case upon the constitutional complaint of the Joint-Stock Company "Closed-End Non-Diversified Venture Corporate Investment Fund AVANPOST" regarding the compliance of the eighth paragraph of Article 11.5 of the Law of Ukraine "On Management of State Property" with the Constitution of Ukraine (constitutionality). Judge-Rapporteur in the case – Oleksandr Lytvynov.

The judgment declared unconstitutional paragraph eight of Article 11.5 of the Law of Ukraine "On Management of State Property" of September 21, 2006 No. 185–V as amended [Law], according to which "companies in the authorised capital of which are the corporate rights of the state, and companies in which 50 percent or more of the shares (stakes) are in the authorised capital of companies, the share of the state of which is 100 percent, who have not decided on the accrual of dividends before May 1 of the year following the reporting year, pay to the state budget part of the net profit in the amount determined by the basic norms of deduction of the share of profit the relevant year, but not less than 30 percent, by July 1 of the year following the reporting year; the amount of such funds is accrued by the bodies of revenues and fees in the manner prescribed by paragraph six of this part, which is paid to the general fund of the State Budget of Ukraine".

The Constitutional Court of Ukraine proceeded from the fact that the guarantees of protection of property rights provided for in Article 13.4, Article 41 of the Basic Law of Ukraine apply to the corporate rights of a member of an economic organisation. Therefore, interference in the corporate rights of a member of an

economic organisation must be conditioned by public necessity, carried out in accordance with the law in compliance with the principle of the rule of law and applying measures that are not too burdensome for his rights and freedoms. Introducing normative regulation of public relations regarding the exercise of corporate rights by a member of an economic organisation, the legislator must adopt relevant sectoral laws, adhering to uniform constitutional principles and ensuring a reasonable balance of interests of each of the participants in legal relations.

The right of the owner of a share in the authorised capital of an economic organisation to participate in its management, which is a component of corporate law, is subject to the guarantees provided for in Articles 13.4 and 41 of the Basic Law of Ukraine. The protection of this right at the constitutional level means that interference with such a right is allowed in exceptional cases for reasons of public necessity, solely on the basis of law and in compliance with the principles of justice and proportionality.

The Constitutional Court of Ukraine considers that the mechanism provided by the disputed provisions of the Law, which is to send part of the net profit to the state budget without the will of the members of economic organisation, restricts their corporate rights, including such a component as the right to participate in the management of the economic organisation. This regulation puts the state in a privileged position compared to other participants in the economic organisation of the public sector of the economy, i.e. is discriminatory, because, having determined the legal basis for management of state property, the legislator did not provide for directing part of the net profit to such participants in case of non-decision on accrual of dividends. At the same time, it is the state that, through the system of organisational and economic powers of the relevant governing bodies, manages the economic entities of the public sector of the economy and has a decisive influence on their economic activities.

The Constitutional Court of Ukraine has concluded that the restriction introduced by the eighth paragraph of Article 11.5 of the Law cannot be considered constitutionally admissible, as such normative regulation is not consistent with the conditions that allow state intervention in property rights, including fairness and proportionality.

#### **JUDGMENT No. 12-r/2020 of October 22, 2020 (the Grand Chamber)**

The case upon constitutional complaints of Oleksandr Davymoka, Mykola Boiko, Volodymyr Kriuk, Vitalii Tokarenko regarding the compliance of the provisions of paragraph 4 of Article 97.1 of the Law of Ukraine "On the National Police" with the Constitution of Ukraine (constitutionality). Judges-Rapporteurs in the case – Viktor Horodovenko, Oleksandr Kasminin, Oleh Pervomayskyi.

The judgment declared as consistent with the Constitution of Ukraine (constitutional) the provisions of paragraph 4 of Article 97.1 of the Law of Ukraine "On the National Police" of July 2, 2015 No. 580–VIII as amended [Law], according to which one-time financial assistance in case of death, the definition of disability of a police officer (hereinafter - one-time financial assistance) is a social benefit

guaranteed by the state, which is appointed and paid to persons who are entitled to it under the Law, in the event of a police officer's disability due to illness, injury (contusion, trauma or mutilation) related to his or her service in the police or internal affairs bodies, within six months after his release from the police due to the reasons specified in this paragraph.

The Constitutional Court of Ukraine proceeded from the fact that one-time financial assistance provided by Article 97 of the Law is a legal remedy of social protection of police officers provided by the state in connection with their disability, but the provisions of Article 46.1 of the Constitution of Ukraine do not guarantee payment of one-time financial assistance, therefore, the Verkhovna Rada of Ukraine may determine the procedure and conditions of its appointment, providing for the procedure for exercising such a right in law.

Given that the dismissal of a police officer from the police service is due to circumstances that arose at the time of his or her service in the police and make it impossible for him or her to continue, regardless of his or her will, the state in accordance with paragraphs 3, 4 of Article 97.1 of the Law provides for a one-time financial assistance, provided that the illness acquired by the police officer led to his disability. Paragraphs 1–6 of Article 97.1 of the Law establish an exhaustive and not subject to expanded interpretation list of grounds for appointment and payment of one-time financial assistance, which include death of a police officer (paragraphs 1, 2); determination of police disability (paragraphs 3, 4), partial loss of capacity by police officer without definition of disability (paragraphs 5, 6).

The enshrinement in paragraph 4 of Article 97.1 of the Law of the procedure for exercising the right to one-time financial assistance requires the establishment of a causal link between a police officer's disability due to illness, injury (contusion, trauma or mutilation) associated with his service in the internal affairs bodies or the police, and the impossibility to continue serving in the police, which is confirmed by the relevant decision of the medical (military medical) commission on unfitness to serve in the police, on the basis of which the police officer is dismissed from police service.

The Constitutional Court of Ukraine concluded that the procedure for receiving one-time financial assistance established in paragraph 4 of Article 97.1 of the Law does not allow unjustified exceptions to the constitutional principle of equality, does not contain signs of discrimination in the exercise of the right to social protection by police officers, is proportionate, has a legitimate, objectively justified purpose.

The Constitutional Court of Ukraine also noted that the procedure established by the state ensures the realisation of the right of a person to receive one-time financial assistance, and stressed that compliance with the requirements set by law is the responsibility of subjects claiming to receive it.

Dissenting opinions were delivered by judges Viktor Horodovenko, Oleksandr Kasminin, Halyna Yurovska. The respective judges of the Constitutional Court of Ukraine disagreed with the Judgment and put forward a number of arguments regarding the unconstitutionality of the disputed provisions of the Law.

## **2.2. CASES PENDING THE CONSTITUTIONAL COURT OF UKRAINE AS OF DECEMBER 31, 2020**

### **CASES UPON CONSTITUTIONAL PETITIONS**

In 2020, the Constitutional Court of Ukraine considered:

- the case upon four constitutional petitions (considered in the joint proceedings):

1) the Supreme Court of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of clause 6 of paragraph one, clauses 2, 13 of paragraph two, paragraph three of Article 3 of the Law of Ukraine "On Government Cleansing" of September 16, 2014 No. 1682-VII.

The subject of the right to constitutional petition considers that certain provisions of the Law do not comply with Article 8.1, Article 61, clauses one and 5 Article 126.5 of the Constitution of Ukraine, as they contradict the principle of legal certainty as a component of the rule of law and impose liability of judges for the same offense;

2) 47 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of Articles 1.3, 1.6, 3.1, 3.2, 3.3, 3.4, 3.8, clause 2 of Article 5.5, clause 2 of the Final and Transitional Provisions of the Law of Ukraine "On Government Cleansing" of September 16, 2014 No. 1682-VII.

The petitioners consider these provisions to violate the constitutional principles of the rule of law, equality and justice, prohibition of discrimination, legal certainty, legality, presumption of innocence, observance and guarantee of basic (natural) human rights, individual responsibility, irreversibility of laws;

3) the Supreme Court of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of Article 1.3, clauses 7, 8, 9 of paragraph one, clause 4 Article 3.2, clause 2 of the Final and Transitional Provisions of the Law of Ukraine "On Government Cleansing" of September 16, 2014 No. 1682-VII.

The applicant claims that the impugned provisions of the Law do not comply with the provisions of Articles 22.3, 38, 58, 61.2, 62.1, 64.1 of the Constitution of Ukraine, as they find collectively guilty without providing an individual approach to responsibility, violate the principle of presumption of innocence, allow narrowing of the content and scope of the existing rights and freedoms (including persons in public service) and restriction of the constitutional human and citizen's rights and freedoms in cases not provided by the Constitution;

4) the Supreme Court of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of Article 4.3 of the Law of Ukraine "On Government Cleansing" of September 16, 2014 No. 1682-VII.

The subject of the right to constitutional petition considers that the challenged provision of the Law contradicts the guaranteed right to equal access to the civil service enshrined in Article 38.2 of the Constitution of Ukraine and Articles 61.2, 62.1 of the Basic Law of Ukraine, as it does not contain the levers of ensuring an individual approach to responsibility and contradicts the principle of the presumption of innocence.

- the case upon the constitutional petition of the Supreme Court of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On the Deposit Guarantee System for Individuals" of February 23, 2012 No. 4452–VI.

According to the petitioner, the Law does not meet the requirements of Articles 6, 8.1, 13.4, 21, 22, 41.1, 41.4 and 41.5 of the Constitution of Ukraine, as the disputed provisions of the Law violate the principles of separation of powers, rule of law, equality of rights of depositors and may create a situation in which an individual (depositor) is unlawfully deprived of ownership of the deposit.

- the case upon the constitutional petition of 48 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On Prevention of Corruption" and Article 366<sup>1</sup> of the Criminal Code of Ukraine.

People's Deputies of Ukraine believe that the disputed provisions of the Law violate the constitutional principles of the rule of law, legal certainty, legality, individual responsibility, prohibition of privacy and dissemination of confidential information, therefore they do not meet the requirements of Articles 8, 19, 21, 22, 24, 28, 32, 38, 41, 43, 57, 58, 61, 62, 64, 68 and 75 of the Basic Law of Ukraine.

- the case upon the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph four of Article 208.2 of the Criminal Procedure Code of Ukraine.

The petitioner claims that the disputed provision of the Code contradicts Articles 29.2 and 29.3 of the Constitution of Ukraine, as it expands the exhaustive list of cases in which lawful authorities may use detention as a temporary precautionary measure without a reasoned court decision.

The subject of the right to constitutional petition also considers that paragraph four of Article 208.1 of the Code does not correspond to legal certainty as an element of the rule of law guaranteed by Article 8.1 of the Constitution of Ukraine, as it provides for the discretionary powers of authorised persons to detain a person without the decision of the investigating judge, the court in the absence of criteria in the law that give grounds for making such a decision.

- the case upon the constitutional petition of 59 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On State Financial Guarantees of Medical Care of the Population" of October 19, 2017 No. 2168–VIII.

In substantiating the allegations of unconstitutionality of the Law as a whole, the petitioners, point out that the disputed provisions of the Law, "which determine its legal nature (legal definition), essence and purposes, do not comply with the Constitution of Ukraine, its norms, given their legal uncertainty, make it impossible to enforce and ensure the constitutional guarantee of the right to health care";

- the case upon the constitutional petition of 45 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 6 of Article 42.2 of the Law of Ukraine "On Higher Education" of July 1, 2017 No. 1556–VII, according to which a person who falls under the effect of Article 1.3 of the Law of Ukraine "On Government Cleansing" cannot be elected, appointed (including acting) to the position of the head of a higher education institution.

The petitioners claim that this provision of the Law contradicts Articles 8.1, 24.1, 24.2, 43.1, 43.2 and 64 of the Constitution of Ukraine. Substantiating the allegation of unconstitutionality of the provision of paragraph 6 of Article 42.2 of the Law, MPs of Ukraine point out that its content and the content of Article 1.3 of the Law of Ukraine "On Government Cleansing" of September 16, 2014 No. 1682–VII, "contribute to the simultaneous existence of two interpretations of these rules in their entirety, which differ significantly from each other." It is also stated that the provision of paragraph 6 of Article 42.2 of the Law concerning restriction for the candidate for a position of the head of higher education institution is not based on special requirements to work in this position and the disputed norm is discriminatory in terms of the implementation of the constitutional right to work.

- the case upon the constitutional petition of 47 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 6 of the Law of Ukraine "On Television and Radio Broadcasting", Articles 15, 15<sup>1</sup>, 26 of the Law of Ukraine "On Cinematography".

The petitioners believe that following provisions do not comply with the Constitution of Ukraine (are unconstitutional):

1) the provisions of the first sentence of paragraph ten of Article 6.2 of the Law of Ukraine "On Television and Radio Broadcasting" of December 21, 1993 No. 3759–XII as amended [Law No. 3759], according to which "broadcasts of audiovisual works (films, TV programmes, except information and information-analytical TV programmes), one of the participants of which is a person included in the List of persons who pose a threat to national security, published on the website of the central executive body that ensures the formation of state policy in the field of culture and arts";

2) certain provisions of the Law of Ukraine "On Cinematography" of January 13, 1998 under No. 9/98–VR as amended [Law No. 9], namely:

- paragraph four of Article 15.3, according to which "one of the participants in the film is an individual included in the List of persons who pose a threat to national security, promulgated in the prescribed manner";

- paragraph four of Article 15.4, according to which "including the inclusion of one of the participants in the film to the List of persons posing a threat to national security, promulgated in the prescribed manner";

- Article 15.6, according to which "The list of persons who pose a threat to national security is formed by a central executive body that ensures the formation of state policy in the field of culture and arts, based on appeals of the National Security

and Defense Council of Ukraine, Security Service of Ukraine, National Council of Ukraine on Television and Radio Broadcasting";

- Article 15.7, according to which "the central executive body, which ensures the formation of state policy in the fields of culture and arts, publishes on its official website the List of persons who pose a threat to national security and ensures its timely update";

- Article 15<sup>1</sup>.1, according to which "broadcasting (showing by broadcasting channels) of films produced by individuals and legal entities of the aggressor state is prohibited";

- Article 15<sup>1</sup>.2, according to which "Prohibition of broadcasting films produced by natural and legal persons of the aggressor state, which do not contain popularisation or propaganda of the aggressor state bodies and their individual actions, applies to films produced and/or first broadcasted (demonstrated) after January 1, 2014";

- Article 26.3, according to which "The procedure for imposing fines for violation of Article 15<sup>1</sup> of this Law shall be approved by the central executive body, which ensures the formation of state policy in the field of cinematography, and shall meet the requirements of the Commercial Code of Ukraine and the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity".

According to the petitioners, the disputed provisions of Law No. 3759, Law No. 9 contradict Articles 3.2, 8.1, 15.3, 19.2, 21, 22.2, 22.3, 24.2, 32.1, 34, 64.1, 75, 92.1.22 of the Constitution of Ukraine.

- the case upon the constitutional petition of 49 People's Deputies of Ukraine on inconsistency with the provisions of Articles 6.2, 8.1, 8.2, 19.2, Article 35.1, 35.2, 25.3, 36.1, 36.5, 37.1, 37.4, 84.2, 84.3, 88.3 and 91 of the Constitution of Ukraine (unconstitutionality) of the Law of Ukraine "On Amendments to Article 12 of the Law of Ukraine "On Freedom of Conscience and Religious Organisations" concerning the name of religious organisations (associations) that are part of the structure of a religious organisation (association), the governing center (administration) of which is located outside Ukraine in a state that is recognised by law as having committed military aggression against Ukraine and/or temporarily occupied a part of the territory of Ukraine" of December 20, 2018 No. 2662–VIII.

The petitioners claim that this law undermines religious freedom and interfaith peace in Ukraine, violates constitutional rights and freedoms of citizens, including the right to freedom of thought and religion, the right to freedom of association in the organisation to exercise and protect their rights and freedoms and interests, the right to freely perform individually or collectively religious cults and rituals, to conduct religious activities and is a direct interference of the state in church affairs, which contradicts the provisions of Articles 35.1, 35.2, 35.3, 36.1, 36.5, 37.1, 37.4 of the Constitution of Ukraine.

They also consider that the said law does not comply with the provisions of Articles 6.2, 8.2, 19.2, 84.2, 84.3, 88.3 of the Constitution of Ukraine due to violation of the constitutional procedure for its consideration and adoption.

- the case upon the constitutional petition of 51 People's Deputies of Ukraine on the inconsistency with the Constitution of Ukraine (unconstitutionality) of the provisions of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402–VIII, which provides: "While in office, a judge may not be a candidate for elected positions in public authorities (except the judiciary) and local self-government bodies, as well as participate in the election campaign" (the second sentence of Article 54.4); "A judge may not be awarded state awards, as well as any other awards, distinctions, diplomas before dismissal or termination of his powers. A judge may be awarded state awards only for his personal courage and heroism in conditions involving a risk to life" (Article 56.9).

According to the People's Deputies of Ukraine, the provisions of the second sentence of Article 54.4 of the Law do not comply with Articles 8, 22, 24, 38, 64, 127 of the Constitution of Ukraine, and the provisions of Article 56.9 of the Law contradict Articles 1, 8, 9, 21, 22, 23, 24, 92 of the Basic Law of Ukraine. In their opinion, the provision of the second sentence of Article 54.4 of the Law "is an arbitrary and expanded interpretation of the requirements of Article 127.2 of the Constitution of Ukraine, which deprives judges of passive suffrage." In addition, the provisions of Article 56.9 of the Law enshrine discrimination against judges against other government officials in Ukraine in terms of awarding state awards and other prizes, distinctions, diplomas.

- a case upon the constitutional petition of 47 People's Deputies of Ukraine on the inconsistency with the Constitution of Ukraine (unconstitutionality) of the provisions of Article 6.6 of the Law of Ukraine "On Remuneration of Labour" of March 24, 1995 No. 108/95–VR [Law] as amended by the Law of Ukraine "On Amendments to some legislative acts of Ukraine" of December 6, 2016 No. 1774–VIII [Law No. 1774], Article 96.6 of the Labour Code of Ukraine [Code] as amended by Law No. 1774–VIII.

According to Article 6.6 of the Law, as amended by Law No. 1774, "the minimum official salary (tariff rate) shall be set at not less than the subsistence level established for able-bodied persons on January 1 of the calendar year" Article 96.6 of the Code, as amended by Law No. 1774, also stipulates that "the minimum official salary (tariff rate) shall be set at a rate not less than the subsistence level established for able-bodied persons on January 1 of the calendar year". The petitioners claim that the subsistence level cannot be used to set a minimum salary (tariff rate). It is only a social guarantee that the minimum wage will not be set below a level sufficient "to ensure the normal functioning of the human body, preserve its health, the set of food, as well as the minimum set of non-food items and the minimum set of services needed to meet basic social and cultural needs of the individual" (Article 1.1 of the Law of Ukraine "On subsistence level").

Also, the constitutional petition states that after the legislative change of the estimated value, all employees below the 13<sup>th</sup> tariff category in accordance with the Unified Tariff Grid of categories and coefficients of remuneration of employees of institutions, establishments and organisations of certain sectors of the budget receive wages at the minimum wage exclusively by paying extra to this level. However, such

surcharges do not belong to the systems of remuneration, which are formed on the basis of assessments of work performed and qualifications of employees, which, in the opinion of the petitioners, does not comply with Articles 8, 22, 43 of the Constitution of Ukraine.

The petition states that after the entry into force of Law No. 1774 in Article 6.6 of the Law as amended by Law No. 1774, Article 96.6 of the Code as amended by Law No. 1774 applied a value that in monetary terms is less than that used to calculate the scheme salaries before amendments to Article 6.6 of the Law, Article 96.6 of the Code, as a result of which employees' incomes were reduced. This position is justified by the fact that the constitutional right to work gives the opportunity to earn a living by own work, and not to live on surcharges up to the minimum wage, which do not allow to ensure a decent life for the employee and his or her family. Thus, the right of everyone to a sufficient standard of living for him- or herself and his or her family is violated, which includes adequate nutrition, clothing, housing, guaranteed by Article 48 of the Basic Law of Ukraine.

- the case upon the constitutional petition of 51 People's Deputies of Ukraine on inconsistency with Articles 6.2, 8.2, 10.2, 10.3, 11, 19.2, 22.3, 24.1, 24.2, 84.2, 84.3, 88.3, 93.1 of the Constitution of Ukraine (unconstitutionality) of the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language" of April 25, 2019 No. 2704–VIII [Law No. 2704].

According to the People's Deputies of Ukraine, "the provisions of this Law are aimed at discrimination against Russian and other languages of national minorities of Ukraine, discrimination against citizens on the basis of language, in addition, the Law No. 2704 violates the constitutional rights of citizens, namely the right to use and protect native language, the right to develop the linguistic identity of all indigenous peoples and national minorities of Ukraine; a narrowing of the content and scope of existing rights and freedoms is envisaged"; "the disputed Law No. 2704 was adopted in violation of the constitutional procedure for consideration and adoption of laws", which "endangers the application of such an integral element of the principle of the rule of law as the principle of legal certainty".

- the case upon the constitutional petition of 51 People's Deputies of Ukraine concerning the official interpretation of the provisions of Articles 7, 20.7, paragraphs 12, 15, 16 of Article 92.1, paragraphs one to five of Article 118, Article 133.2, paragraphs one to four of Article 140, Articles 141.2 and 141.4 of the Constitution of Ukraine in the context of the following issues:

- whether the Kyiv City Council can form departments, administrations and other executive bodies outside the structure of the Kyiv City State Administration;

- whether a person elected by the Kyiv City Mayor may be dismissed by the President of Ukraine from the position of the head of the Kyiv City State Administration, provided that the powers of the person elected by the Kyiv City Mayor are not terminated in accordance with the procedure established by law;

- whether a person not elected by the Kyiv City Mayor may be appointed by the President of Ukraine to the position of the head of the Kyiv City State

Administration, provided that the powers of the person elected by the Kyiv City Mayor are not terminated in accordance with the procedure established by law.

The necessity for an official interpretation of these constitutional provisions is justified by "the impossibility of resolving the issues raised in the constitutional petition by existing ways of resolving legal conflicts, as well as the existence of different legal points of view on their resolution".

- the case upon the constitutional petition of 45 People's Deputies of Ukraine on the inconsistency with Articles 1, 6, 8, 19, 85, 92, 106, 116 of the Constitution of Ukraine (unconstitutionality) of the provisions of Article 11.1, paragraph 1 of Article 11.3, paragraph two (according to the constitutional petition – clauses 1, 3 of paragraph two) of Article 23 of the Law of Ukraine "On the State Bureau of Investigation" of November 12, 2015 No. 794-VIII in terms of consolidating the powers of the President of Ukraine to appoint the Director of the State Bureau of Investigation [Bureau], to appoint three members of the commission for the competition for the positions of the Director of the Bureau, his first deputy and deputy and informing by the Director of the Bureau the President of Ukraine on the main issues of the Bureau and its subdivisions activities, the implementation of their tasks, as well as submission to the President of Ukraine of an annual written report on the activities of the Bureau for the previous year.

According to the People's Deputies of Ukraine, Article 106 of the Constitution of Ukraine, which contains an exhaustive list of powers of the President of Ukraine, does not provide for the appointment of heads of central executive bodies (including the director of the Bureau), members of the competition commission for selection of heads of any central executive bodies, as well as the exercise by the President of Ukraine of control over the work of such executive bodies, direction and coordination of their activities<sup>1</sup>.

- the case upon the constitutional petition of 51 People's Deputies of Ukraine on the inconsistency with the Constitution of Ukraine (unconstitutionality) of the provisions of Section I, paragraph 2.1.2 of Section II of the Law of Ukraine "On repealing the Law of Ukraine "On the list of objects of state property that are not subject to privatisation" of October 2, 2019 No. 145-IX, by which the Verkhovna Rada of Ukraine decided to invalidate the Law of Ukraine "On the list of objects of state property that are not subject to privatisation" and to exclude paragraph nineteen in Article 4.2 of the Law of Ukraine "On privatisation of state and communal property".

People's Deputies of Ukraine consider that the provisions of Section I of the Law do not comply with Articles 1, 6.2, 8.1, 8.2, 13.4, 16, 17.1, 19.2, paragraphs 33, 36 of Article 85.1 of the Constitution of Ukraine, and the provisions of paragraph 2.1.2 of Section II of the Law contradict Articles 13.4 and 17.1 of the Basic Law of Ukraine.

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<sup>1</sup> The ruling on refusal to initiate constitutional proceedings in the case as to a part of the constitutional petition was adopted.

- the case upon the constitutional petition of 46 People's Deputies of Ukraine on the official interpretation of the first sentence of Article 13.1 of the Constitution of Ukraine, according to which land, its subsoil, air, water and other natural resources within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone are objects of property of the Ukrainian people, and Article 14.1 of the Constitution of Ukraine, according to which land is the main national wealth under special protection of the state, in systematic conjunction with other provisions of the Constitution Of Ukraine:

- Preamble, which stipulates that the Verkhovna Rada of Ukraine, on behalf of the Ukrainian people - citizens of Ukraine of all nationalities, expressing the sovereign will of the people, based on the centuries-old history of Ukrainian state-building and on the right to self-determination realised by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms and of the worthy conditions of human life, caring for the strengthening of civil harmony on Ukrainian soil, and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine, striving to develop and strengthen a democratic, social, law-based state, aware of responsibility before God, our own conscience, past, present and future generations, guided by the Act of Declaration of the Independence of Ukraine of August 24, 1991, approved by the national vote on December 1, 1991, adopts this Constitution - the Fundamental Law of Ukraine;

- Article 1, according to which Ukraine is a sovereign and independent, democratic, social, law-based state;

- Article 3.2, according to which human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State;

- Article 5.2, according to which the people are the bearers of sovereignty and the only source of power in Ukraine. The people exercise power directly and through bodies of state power and bodies of local self-government;

- Article 13.4, according to which the State ensures the protection of the rights of all subjects of the right of property and economic management, and the social orientation of the economy. All subjects of the right of property are equal before the law.

According to the petitioners, the lack of official interpretation of the concept of land as an object of property of the Ukrainian people, the main national wealth in the context of the first sentence of Articles 13.1 and 14.1 of the Constitution of Ukraine may further question compliance with the Basic Law of Ukraine of the adopted laws, as well as lead to a violation of civil harmony in Ukraine. The People's Deputies of Ukraine claim that the right of land ownership of the Ukrainian people and the right of land ownership of citizens, legal entities, territorial hromadas, and the state are not identical.

- the case upon the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights regarding the inconsistency with

Articles 1, 3.2, 8.1, 8.2, 19.2, 22.2, 22.3, 40, 46.1, 46.2, 64 of the Constitution of Ukraine (unconstitutionality) of Article 90, paragraph 2.1 of Section XI "Final and Transitional Provisions" of the Law of Ukraine "On Civil Service" of December 10, 2015 No. 889–VIII [Law No. 889], Article 21.7 of the Law Of Ukraine "On Service in Local Self-Government Bodies" of June 7, 2001 No. 2493–III [Law No. 2493].

According to the disputed provisions of the Law No. 889, the pension provision of civil servants is provided in accordance with the Law of Ukraine "On Compulsory State Pension Insurance" (Article 90); the Law of Ukraine "On Civil Service" of December 16, 1993 No. 3723–XII as amended, was repealed, except for Article 37, which applies to the persons referred to in paragraphs 10 and 12 of Section XI "Final and Transitional Provisions" of Law No. 889 (paragraph 2.1 of Section XI "Final and Transitional Provisions"). According to Article 21.7 of the Law No. 2493, the pension provision of local governments officials is carried out in accordance with the Law of Ukraine "On Compulsory State Pension Insurance".

The petitioner claims that the disputed provisions of Laws No. 889 and No. 2493 changed the conditions of pension provision for civil servants and local government officials, and did not provide for the right to recalculate (index) pensions granted under the Law of Ukraine "On Civil Service" of December 16, 1993 No. 3723–XII as amended, so they do not comply with certain provisions of the Constitution of Ukraine.

- the case upon the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights regarding inconsistency with the provisions of Articles 8.1, 8.2, 22.2, 22.3, 41.1, 41.4, 42.1, 64.1 of the Constitution of Ukraine (unconstitutionality) of the provisions of paragraph 2 of Article 7.1 of the Law of Ukraine "On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance" of July 8, 2010 No. 2464–VI as amended [Law].

Article 7 of the Law defines the basis for accrual of the single contribution to the obligatory state social insurance [single contribution]. The disputed provisions of the Law stipulate that the single contribution is accrued "for taxpayers specified in paragraphs 4 (except for natural persons-entrepreneurs who have chosen the simplified taxation system), 5 and 51 of Article 4.1 of this Law - for the amount of income (profit) received from their activities, which are subject to personal income tax. In this case, the amount of the single contribution may not be less than the minimum insurance premium per month.

If such payer does not receive income (profit) in the reporting quarter or a separate month of the reporting quarter, such payer is obliged to determine the accrual base, but not more than the maximum amount of the single contribution accrual base established by this Law. In this case, the amount of the single contribution may not be less than the amount of the minimum insurance premium".

According to the petitioner, by the provisions of paragraph 2 of Article 7.1 of the Law regarding the obligation to determine the basis for accrual of a single contribution by a payer who did not receive income (profit) in the reporting period, "the interference with private property and the right to do business was conducted".

- the case upon the constitutional petition of 50 People's Deputies of Ukraine concerning the conformity of the Law of Ukraine "On Amendments to Article 80 of the Constitution of Ukraine (on the inviolability of People's Deputies of Ukraine)" with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition argued that the challenged Law did not comply with Articles 6, 8, 19, 155 of the Constitution of Ukraine, as its adoption by the Verkhovna Rada of Ukraine violated the constitutional procedure of consideration and adoption, and therefore the parliament violated the principle of the rule of law and acted in the manner not provided by the Constitution of Ukraine.

The petitioners noted that "the Verkhovna Rada of Ukraine after the withdrawal of the draft law No. 7203 of October 17, 2017, ignoring the Opinion of the Constitutional Court of Ukraine of June 19, 2018 No. 2-v/2018, and voting for a new draft law No. 7203 of August 30, 2019, failing to comply with the requirements for the adoption of the law on amendments to the Constitution of Ukraine at regular sessions of parliament, thereby grossly violated the procedure established by the Basic Law of Ukraine for amending the Constitution of Ukraine".

- the case upon the constitutional petition of 54 People's Deputies of Ukraine concerning the compliance of certain provisions of the laws of Ukraine "On Verification and Monitoring of State Payments", "On Banks and Banking", "On the State Border Guard Service of Ukraine", "On Personal Data Protection", "On State Registration of Civil Status Acts", "On Collection and Accounting of the Single Contribution to the Obligatory State Social Insurance", "On the State Register of Voters", "On Information", "On Employment", "On the Unified State Demographic Register and Documents Confirming the Citizenship of Ukraine, Certifying the Person or his Special Status", "On State Registration of Real Rights to Immovable Property and their Encumbrances", "On State Registration of Legal Entities, Natural Persons - Entrepreneurs and Public Formations" with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition considers that these disputed provisions of the laws of Ukraine contradict Articles 8.1 and 32.2 of the Constitution of Ukraine, as they, in particular, do not respect the principle of legal certainty as a component of the rule of law. and one of its elements - the processing of confidential information without the consent of the person, is not consistent with any of the three public interests listed in Article 32.2 of the Constitution of Ukraine: national security, economic welfare, human rights".

- the case upon the constitutional petition of 50 People's Deputies of Ukraine concerning the compliance of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures to Reform the Prosecutor's Office" [Law No.113] with the Constitution of Ukraine (constitutionality).

The petitioners believe that the adoption of Law No. 113 "caused a narrowing of the content and scope of existing rights of citizens, introduced a dualism of legal

principles of organisation and activity of the Prosecutor's Office of Ukraine, the status of prosecutors."

According to the People's Deputies of Ukraine, Law No. 113 does not comply with the provisions of Articles 8, 92, 131-1 of the Basic Law of Ukraine, as it "introduces double legal regulation of the Prosecutor's Office of Ukraine, powers of the Prosecutor General, status of prosecutors, procedure and grounds for their dismissal and appointment, violates the constitutional principle of legal certainty, and its norms are not specific and clear enough, and therefore can be interpreted arbitrarily, which leads to a violation of fundamental human and citizen's rights, guaranteed by the Constitution of Ukraine."

The constitutional petition states that Law No. 113 contradicts Articles 22, 24, 43 and 64 of the Constitution of Ukraine, as its norms "unlawfully limit the scope and deprive prosecutors of labour rights and guarantees proclaimed by the Constitution and laws of Ukraine, as well as international treaties, ratified by Ukraine", in particular, these norms "violate the guaranteed rights of citizens to work, introduce discriminatory arbitrary and unjustified dismissal of a certain category of persons, while granting certain privileges to others".

In addition, the subject of the right to constitutional petition considers that, having adopted Law No. 113, the provisions of which, in the opinion of the petitioners, contradict the provisions of Articles 8, 9, 19, 22, 24, 43, 64, 92, 106, 131-1 of the Constitution of Ukraine, the Verkhovna Rada of Ukraine went beyond its powers, thereby violating Article 19.2 of the Basic Law of Ukraine.

- the case upon the constitutional petition of 56 People's Deputies of Ukraine regarding the compliance of certain provisions of the Law of Ukraine "On Complete General Secondary Education" the Constitution of Ukraine (constitutionality).

The constitutional petition states that the provisions of the third paragraph of Article 22.2 of the Law do not correspond to Articles 8.1, 24.1, 24.2, 43.1, 43.6 of the Constitution of Ukraine, as "level the constitutional right of citizens to work, as well as establish discriminatory working conditions for persons who have reached retirement age"<sup>2</sup>.

- the case upon two constitutional petitions (considered in the joint proceedings):

1) 48 People's Deputies of Ukraine regarding the compliance of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Conditions of Circulation of Agricultural Lands" and certain provisions of the Land Code of Ukraine as amended by this law with the Constitution of Ukraine (constitutionality).

The People's Deputies of Ukraine note that land is the only strategic resource that cannot be reproduced and is a condition for the viability and preservation of the gene pool of the Ukrainian nation, on which Ukraine's food security and economic role in the world depend; the loss of land, which is part of the territory of the state, threatens the loss of state sovereignty, and in the worst case - the termination of the state as

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<sup>2</sup> In the part of the constitutional petition, the initiation of constitutional proceedings in the case was refused.

such, because the territory of the state, especially land, is an integral attribute of any statehood.

The subject of the right to constitutional petition claims that land as an object of property right of the Ukrainian people is the main national wealth, is under special protection of the state, which primarily concerns agricultural lands.

According to the petitioners, during the adoption of the Law, the procedure for its consideration and adoption was violated.

The People's Deputies of Ukraine emphasise that only the Ukrainian people have the right to decide on the disposal of such an object of property rights as land through an all-Ukrainian referendum;

2) 53 People's Deputies of Ukraine regarding the compliance of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Conditions of Circulation of Agricultural Lands" with the Constitution of Ukraine (constitutionality).

According to the petitioners, "the Law is unconstitutional, as its adoption by the Verkhovna Rada of Ukraine was in violation of the constitutional procedure of consideration and adoption, and the provisions of the Law, as well as its purpose, contradict the provisions of the Constitution of Ukraine."

The People's Deputies of Ukraine emphasise that "issues concerning land owned by the Ukrainian people cannot be resolved against their will, without the will of the citizens of Ukraine in an all-Ukrainian referendum".

- the case upon the constitutional petition of 142 People's Deputies of Ukraine concerning the official interpretation of a specific provision of the fourth paragraph of the preamble of the Constitution of Ukraine.

The petitioners request official interpretation of a specific provision of the fourth paragraph of the preamble of the Constitution of Ukraine, namely the combination of the words "decent living conditions" in a systematic connection with the following provisions of the Constitution of Ukraine:

- human rights and freedoms and their guarantees determine the content and orientation of the activity of the State; the State is answerable to the individual for its activity; to affirm and ensure human rights and freedoms is the main duty of the State (Article 3.2);

- the State ensures the protection of the rights of all subjects of the right of property and economic management, and the social orientation of the economy; all subjects of the right of property are equal before the law (Article 13.4);

- the State ensures social protection of citizens of Ukraine who serve in the Armed Forces of Ukraine and other military units, as well as members of their families (Article 17.5).

According to the petitioners, the need for an official interpretation of a specific provision of the fourth paragraph of the preamble of the Constitution of Ukraine in systematic connection with these provisions of the Basic Law of Ukraine arose in order to clarify which living conditions should be considered decent given the social

orientation of the economy, which is an indicator of decent living conditions in terms of the main duty of the state to affirm and ensure human rights and freedoms.

- the case upon the constitutional petition of 53 People's Deputies of Ukraine regarding the compliance of the Law of Ukraine "On Amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine on Combating Abuse of Rights of People's Deputies of Ukraine in Legislative Procedure" with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition considers that during the consideration and adoption of the Law the legislative procedure was violated, in particular the requirements of Articles 83.5, 93.1 of the Constitution of Ukraine. The petitioners also note that it is contrary to the provisions Articles 1, 5.2, 8.1, 8.2, 22.2, 22.3, 38.1, 79.1, 79.2, 79.3, 93.1 of the Constitution of Ukraine the Law provides for depriving a People's Deputy of Ukraine of the opportunity to duly defend his right of legislative initiative, which he, among other things, exercises through the submission of amendments and proposals to the draft laws of Ukraine.

- the case upon the constitutional petition of 47 People's Deputies of Ukraine regarding the compliance of certain provisions of the Commercial Code of Ukraine, laws of Ukraine "On the Cabinet of Ministers of Ukraine", "On Pipeline Transport", "On Management of State Property" with the Constitution of Ukraine (constitutionality).

The petitioners claim that the challenged legislative provisions do not comply with Articles 1, 6.2, 8.1, 8.2, 19.2, 85, 113.1, 116.5, 116.9 of the Constitution of Ukraine, because, in particular, they were "adopted not in the development of constitutional norms for the Cabinet of Ministers of Ukraine to manage state property, but on the contrary - in order to remove the Government of Ukraine from exercising its powers under the Constitution, which unbalances the system of state power."

The subject of the right to constitutional petition also considers that "by limiting the powers of the Cabinet of Ministers of Ukraine to manage state property, direct and coordinate the work of ministries and other executive bodies, the Verkhovna Rada of Ukraine exceeded its constitutional powers".

- the case upon the constitutional petition of 50 People's Deputies of Ukraine regarding the compliance of the Law of Ukraine "On Prevention of Persecution and Punishment of Persons in Relation to Peaceful Assemblies and Recognition of Certain Laws of Ukraine as Repealed" with the Constitution of Ukraine (constitutionality).

People's Deputies of Ukraine, in particular, believe that the disputed law "eliminates the institution of protection of human life and health by the State and eliminates the principle of inevitability of punishment," as well as creates "in society the impression of permissibility of crimes against human life and health".

The petitioners note that, providing for the possibility of applying the provisions of the Law of Ukraine "On Amnesty in Ukraine", the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, the Code of Administrative Offenses during the

implementation of the Law, the legislator put the Law over the codes governing criminal and criminal procedure legislation, which violated the principle of legal certainty.

The subject of the right to constitutional petition also claims that the Law was adopted in violation of the provisions of Articles 89 and 93 of the Constitution of Ukraine, as the draft Law was not considered by the Verkhovna Rada Committee and submitted to Parliament without its opinion, and People's Deputies of Ukraine were deprived of the right to submit proposals and amendments to it, as the Law was adopted by ad hoc procedure; the entry into force of the Law was in violation of Articles 94 and 112 of the Constitution of Ukraine, as the Law was signed by the Chairman of the Verkhovna Rada of Ukraine, who was not authorised to perform the duties of the President of Ukraine.

- the case upon the constitutional petition of 58 People's Deputies of Ukraine regarding the compliance of certain provisions of the Law of Ukraine "On the State Bureau of Investigation" with the Constitution of Ukraine (constitutionality).

According to the petitioners, the legislator did not comply with the requirements of the Basic Law of Ukraine - Article 1 of the Law changed the status of the State Bureau of Investigation, "renaming the central executive body for law enforcement to "state law enforcement""", in fact, removing it from the central bodies of executive power and subordinating to the President of Ukraine, which led to a violation of the constitutional principle of separation of state power.

The People's Deputies of Ukraine emphasise that the provisions of the Law, which provide for the President of Ukraine to authorise the organisational structure of the State Bureau of Investigation, appoint and dismiss the Director of the State Bureau of Investigation, determine the composition of the commission for the position of Director of the State Bureau of Investigation, to approve the Regulations on the Public Control Council and the procedure for its formation do not comply with Article 106 of the Constitution of Ukraine, as the President of Ukraine is endowed with powers not inherent in him outside the constitutionally defined.

The subject of the right to constitutional petition notes that the disputed provisions of the Law contradict "the foundations of the legal order in Ukraine, as the legislator expanded the functions and scope of powers of the President of Ukraine at the legislative level, violating the provisions of Article 106 of the Constitution of Ukraine on the exclusive scope and content of the powers of the President of Ukraine under the Basic Law of Ukraine. By such actions, the legislator violated the constitutional requirements provided for in Articles 8 and 19 of the Constitution of Ukraine regarding ensuring the legal order and the need to comply with the rule of law and the Constitution".

- the case upon the constitutional petition of 64 People's Deputies of Ukraine regarding the compliance of certain provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving Banking Regulation Mechanisms" and this law as a whole, certain provisions of the Civil Code

of Ukraine, Code of Criminal Procedure of Ukraine, Code of Administrative Procedure of Ukraine, Code of Civil Procedure of Ukraine, Code of Commercial Procedure of Ukraine, laws of Ukraine "On the National Bank of Ukraine", "On Banks and Banking", "On Deposit Guarantee System for Individuals", "On Enforcement Proceedings" as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Mechanisms for Regulation of Banking Activity" [Law No. 590] with the Constitution of Ukraine (constitutionality).

The People's Deputies of Ukraine believe that the disputed provisions of these legislative acts give the National Bank of Ukraine, the Deposit Guarantee Fund of individuals and related government agencies the advantage of appealing their administrative acts before other participants in the proceedings. In addition, according to the petitioners, the amendments to Law No. 590 nullify the rule of law, adversarial principles and equality of litigants and thus violate the right to a fair trial and effective judicial protection of plaintiffs in appeals against these administrative acts.

The constitutional petition also alleges violation of the procedure for consideration and adoption of the Law No. 590 (reg. No. 2571-d).

- the case upon the constitutional petition of 48 People's Deputies of Ukraine regarding the compliance of certain provisions of the Commercial Code of Ukraine, the Law of Ukraine "On Management of State Property", requirements for an independent member of the supervisory board of a state unitary enterprise and company of which more than 50 percent of shares (stakes) belong to the state, approved by the Cabinet of Ministers of Ukraine dated March 10, 2017 No. 142, the Procedure for determining and approving candidates for state representatives appointed to the supervisory boards of state unitary enterprises and those participating in general meetings and are elected to the supervisory boards of companies in the authorised capital of which more than 50 percent of shares (stakes) belong to the state, approved by the resolution of the Cabinet of Ministers of Ukraine of March 10, 2017 No. 143 with the Constitution of Ukraine (constitutionality).

The petitioners, in particular, consider it contrary to the Constitution of Ukraine to give the Cabinet of Ministers of Ukraine the power to independently regulate relations related to the management of state property, instead of establishing it at the level of law.

The constitutional petition also states that the disputed provisions, according to which, in particular, the majority in the supervisory boards of state-owned enterprises are independent members, which should be guided by the interests of such enterprises in management decisions, and which allow the election of independent members of such councils and foreigners do not comply with Articles 1, 5.2, 6.2, 8.1, 8.2, 13.4, 17.1, 19.2, 38.1, 75, 92.1.12, 116.5 of the Constitution of Ukraine.

- the case upon the constitutional petition of 47 People's Deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs one to four of part two, paragraph three, paragraphs six to

nine, paragraphs twenty, twenty-one, twenty-two, parts twenty-six, parts twenty-eight to thirty-three of Articles 9.1 and 9.2 of the Law of Ukraine "On Alternative Energy Sources" [Law No. 555], parts two, four, paragraph 3 of part nine of Article 65 of the Law of Ukraine "On the Electricity Market" [Law No. 2019] with the Constitution of Ukraine (constitutionality).

The People's Deputies of Ukraine believe that in adopting Law No. 555 the Verkhovna Rada of Ukraine as a legislative body went beyond its powers, interfering in the sphere of constitutional powers of another branch of government, including the executive, having established without any alternatives at the legislative level coefficients and mechanism for calculating the "green" tariff, thereby depriving the executive body of its discretion and the power to change them in any way; the disputed provisions of the Law No. 2019, according to the People's Deputies of Ukraine, in their interconnection lead to illegal expenditures from the State Budget of Ukraine and its imbalance.

- the case upon the constitutional petition of 49 People's Deputies of Ukraine regarding the compliance of the Law of Ukraine "On the Supreme Anti-Corruption Court" with the Constitution of Ukraine (constitutionality).

The constitutional petition states that the Law contradicts Articles 1, 2.1, 5.2, 8.1, 8.2, 21, 22.2, 22.3, 24.1, 38.1, 43.2, 85.1.3, 92.1.14, 125.6, 126.1, 126.2, 127.3, 127.4, 128.1, 129.2.8, 130.1, 131.1.1 of the Constitution of Ukraine.

The People's Deputies of Ukraine claim that the provisions of the Law that determine: the status of the Supreme Anti-Corruption Court (Article 1); features of amendments to the Law (Article 2.2); powers of the Supreme Anti-Corruption Court (Article 4.1); number of judges of the Supreme Anti-Corruption Court (Article 5.1); requirements for judges of the Supreme Anti-Corruption Court, as well as restrictions for candidates for the position of a judge of this court (Articles 7.2 and 7.4); the procedure for holding a competition for the position of a judge of the Supreme Anti-Corruption Court and empowerment of the Public Council of International Experts (Article 8); additional security guarantees for judges of the Supreme Anti-Corruption Court (Article 10); monitoring the integrity of judges of the Supreme Anti-Corruption Court (Article 11); providing housing conditions for judges of the Supreme Anti-Corruption Court (Article 13), "do not comply with the Constitution of Ukraine, as given their legal uncertainty, they narrow the existing scope and content of citizens' rights, including labour, proclaimed by the Constitution and laws of Ukraine." According to the petitioners, "there are all grounds for declaring the Law unconstitutional in full".

- the case upon the constitutional petition of 51 People's Deputies of Ukraine regarding the compliance of paragraph 51.3 of the Procedure for organising and conducting stock auctions for crude oil, gas condensate of own production and liquefied gas, approved by the Resolution of the Cabinet of Ministers of Ukraine "On the organisation and conduct of exchange auctions for the sale of crude oil, gas

condensate of own production and liquefied gas" of October 16, 2014 No. 570 with the Constitution of Ukraine (constitutionality).

In accordance with paragraph 51.3 of the Procedure, the seller fulfills its obligations to supply crude oil, gas condensate and liquefied gas after receipt of funds from the buyer in full in accordance with the terms of the contract of sale. The constitutional petition states that "the disputed provision establishes the legal regime of ownership of these types of raw materials" and provides unequal competitive conditions for oil and gas market participants. Having settled the legal relations, which should be determined exclusively by the laws of Ukraine, the Cabinet of Ministers of Ukraine has gone beyond its powers.

- the case upon the constitutional petition of 47 People's Deputies of Ukraine regarding the compliance of the provisions of Articles 96-1, 96-2 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality).

The petitioners consider that the disputed provisions of the Code do not comply with the provisions of the Constitution of Ukraine (are unconstitutional), as special confiscation duplicates punishment in the form of confiscation of property, violates the principle of proportionality, individualisation of responsibility and presumption of innocence, deprives of private property rights.

- the case upon the constitutional petition of 47 People's Deputies of Ukraine regarding the compliance of certain provisions of the laws of Ukraine "On Prevention of Corruption", "On the Prosecutor's Office", "On the National Anti-Corruption Bureau of Ukraine", "On the State Bureau of Investigation", "On the National Agency of Ukraine on Detection, Search and Management of Assets Obtained from Corruption and Other Crimes", the Criminal Code of Ukraine, the Code of Civil Procedure of Ukraine with the Constitution of Ukraine (constitutionality).

The issue of constitutionality of following provisions is singled out in separate constitutional proceedingS:

- paragraphs 17, 18 of Article 1.1, paragraphs 2, 2-1, 3, 8-11 of Article 46.1, Article 46.3 of the Law of Ukraine "On Prevention of Corruption" of October 14, 2014 No. 1700-VII as amended, in conjunction with the provisions of Article 368-5 of the Criminal Code of Ukraine;

- articles 23.4, 24.3, 26.3, 34.1.2, 81.2.2, 89.4, Article 116.4.2, paragraph 1-1 of Article 150.1, 151.3, 153.5, 272.8.2, 274.4.4, 290, 291, 292, 351.1.2 of the Code of Civil Procedure of Ukraine in conjunction with certain provisions of Article 69.2 of the Law of Ukraine "On Prevention of Corruption" of October 14, 2014 No. 1700 – VII as amended;

- articles 8.5.3, 23.3.4, 23.4.5, Article 23.8 of the Law of Ukraine "On the Prosecutor's Office" of October 14, 2014 No. 1697-VII as amended;

- articles 16.1.10, paragraphs 2, 4, 17 of Article 17.1, Article 19, paragraph 1.14 of Article 26.3 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014 No. 1698-VII;

- paragraph 81 of Article 6.1, paragraphs 21, 22, 10, 11 of Article 7.1, paragraph one of Article 8.1, Article 8.2 of the Law of Ukraine "On the State Bureau of Investigation" of November 12, 2015 No. 794-VIII as amended;

- paragraphs 2, 3, 4 of Article 1.1, Article 2.1, paragraph 2 of Article 15.1, paragraph one of Article 16.1, paragraph one of Article 19.1, paragraph 1 of Article 20.1, Article 23.4, paragraphs 1–4 of Article 25.1 of the Law of Ukraine "On the National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes" of November 10, 2015 No. 772-VIII as amended.

The petitioners consider that certain provisions of these legislative acts do not comply with Articles 1, 3, 6.2, 8.1, 8.2, 19.2, 21, 22.2, 22.3, 24.1, 24.2, 32.1, 32.2, 41.1, 41.4, 21.6, 58, 61.2, 62.1, 62.2, 62.3, 64, 68.1 of the Constitution of Ukraine.

- the case upon the constitutional petition of 45 People's Deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 1 of Article 37.2, Article 45, paragraph 12 of Section XII "Final and Transitional Provisions" of the Law of Ukraine "On Judiciary and Status of Judges" of June 2, 2016 No. 1402-VIII and certain provisions of the Code of Administrative Procedure of Ukraine, the Code of Commercial Procedure of Ukraine, the Code of Civil Code of Ukraine, the Code of Criminal Procedure of Ukraine.

The constitutional petition states that "the judiciary is headed by an unconstitutional body, the Grand Chamber of the Supreme Court, which is only a part of the Supreme Court in name and a separate court from the Supreme Court in terms of functions and jurisdiction, the judges of which are appointed in violation of the uniform status of judges under a procedure not provided for in the Constitution".

- the case upon the constitutional petition of 45 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On peculiarities of privatisation of enterprises of the State Joint Stock Company 'Ukrrudprom' [Law], Order of the Cabinet of Ministers of Ukraine "On measures to privatise stakes of enterprises of SJSC 'Ukrrudprom' [Order].

The petitioners consider that the Law and the Order do not comply with the provisions of Articles 13.4, 21, 22.2, 22.3, 24.1, 24.2, 41.2, 42.1, 42.3, 64.1 of the Constitution Of Ukraine. They claim that most of the provisions of the Law "establish and ensure the exercise of the privileged right of investors to acquire shares in enterprises of 'Ukrrudprom'".

- the case upon the constitutional petition of the Supreme Court regarding the official interpretation of the provision of Article 105.1 of the Constitution of Ukraine.

According to the petitioner, the need for an official interpretation of Article 105.1 of the Constitution of Ukraine arose due to the fact that "the Constitution of Ukraine defines the immunity of the Ukrainian head of state without specific parameters, in a short formula; the Basic Law does not specify what exactly is the inviolability of the President of Ukraine. At the same time, there are no norms in the legislation of Ukraine that would detail the immunity of the head of state and clarify

the grounds and procedural mechanism for bringing the President of Ukraine to justice for committing administrative offenses".

The Supreme Court notes that the algorithm for determining the components of the immunity of the President of Ukraine is given in the Judgment of the Constitutional Court of Ukraine of December 10, 2003 No. 19-rp/2003 in the case on the immunity and impeachment of the President of Ukraine, from the analysis of which the Supreme Court sees that the President of Ukraine during the term of office may not be prosecuted and may be removed from office only on the basis of the constitutional procedure of impeachment; in accordance with the current legislation of Ukraine, the President of Ukraine may be prosecuted only after the expiration of his term of office or in the event of early termination of his powers by impeachment; the question of whether the President of Ukraine can be brought to administrative liability is not disclosed in this Judgment.

However, according to the subject of the right to constitutional petition, the President of Ukraine is a subject of certain administrative offenses. Law enforcement agencies drew up protocols on the commission of administrative offenses by the President of Ukraine and sent them to the courts to adopt decisions on bringing the head of state to administrative responsibility. The Supreme Court also notes that national courts do not always approach the possibility of bringing the President of Ukraine to administrative responsibility in the same way.

- the case upon the constitutional petition of the Supreme Court on the compliance with the Constitution of Ukraine (constitutionality) of paragraph 3 of section III "Final and Transitional Provisions" of the Law of Ukraine "On Repealing the Law of Ukraine "On the List of Objects of State Property that are not Subject to Privatisation".

According to the disputed provision of the Law, it is prohibited to perform enforcement actions in accordance with the Law of Ukraine "On Enforcement Proceedings" regarding objects of state property, which on the day of entry into force of the Law were included in the lists approved by the Law of Ukraine "On the List of Objects of State Property that are not Subject to Privatisation", within three years from the date of entry into force of the Law, except for the recovery of funds and goods that have been pledged under credit agreements.

According to the Supreme Court, paragraph 3 of Section III "Final and Transitional Provisions" of the Law "restricts a person's constitutional right to judicial protection and violates the constitutional guarantees regarding the binding nature of a court decision".

- the case upon the constitutional petition of 46 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Cabinet of Ministers of Ukraine "On the Implementation of the Pilot Project "National Tobacco Market Operator" of September 9, 2020 No. 840.

According to the petitioners, the Resolution is unconstitutional, as its provisions are aimed at "unlawful restriction of competition, establishment and consolidation for a long time of a monopoly position of one business entity in the

market", make it impossible to conduct business by other businesses in this area", as well as "force the other participants in the tobacco market of Ukraine to cooperate with a legal entity designated by the National Operator, regardless of their will and the principle of freedom of enterprise."

The People's Deputies of Ukraine claim that, having issued the Resolution, the Cabinet of Ministers of Ukraine has gone beyond its powers, as the freedom of entrepreneurial activity can be limited only by laws.

- the case upon the constitutional petition of 51 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 6 of Article 4.1, Article 11.3 of the Law of Ukraine "On Voluntary Amalgamation of Territorial Hromadas".

The petitioners believe that the disputed provisions of the Law do not comply with the provisions of the Constitution of Ukraine, as "the existence of a legally established mechanism for amalgamation of territorial hromadas contradicts the ideology of voluntary association of territorial hromadas and leads to narrowing the constitutional right of hromada members to such voluntary amalgamation".

- the case upon the constitutional petition of 49 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of Ukraine "On the Formation and Liquidation of Districts".

The petitioners note that the Verkhovna Rada of Ukraine, having adopted the Resolution, established new principles of administrative-territorial organisation of Ukraine at the middle (subregional) level and actually changed the territorial structure of Ukraine.

People's Deputies of Ukraine claim that as of today it is unclear for ordinary citizens of Ukraine which court to apply to; additional efforts are needed to clarify the relevant information, which does not contribute to ensuring access to justice for Ukrainian citizens. The system of prosecutor's offices and pre-trial investigation bodies is built in accordance with the administrative-territorial structure of the country, so when changing the boundaries of districts it will be necessary to coordinate the entire system of law enforcement agencies to determine their jurisdiction.

In addition, according to the subject of the right to constitutional petition, citizens of Ukraine are deprived of real access to both executive and local self-government bodies and courts. The consolidation of the territories of the districts will create additional complications, which in the future will lead to delays in court proceedings and violation of procedural deadlines; the procedure of reorganisation of courts in connection with the consolidation of districts requires the involvement of huge organisational and material resources. According to the People's Deputies of Ukraine, the adoption of the Resolution created legal uncertainty regarding the functioning of the judiciary and access of citizens of Ukraine to justice.

The Resolution defines the cities that have become the administrative centers of the respective districts. According to the petitioners, the legislation of Ukraine does

not contain the concept of "administrative center of the district", nor does it regulate the peculiarities of the status of administrative-territorial units in connection with their definition by such centers. This, in the opinion of the People's Deputies of Ukraine, does not comply with the principle of legal certainty enshrined in Article 8 of the Constitution of Ukraine.

- the case upon the constitutional petition of 50 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of paragraph 31 of Section IV "Final and Transitional Provisions" of the Law of Ukraine "On the National Commission for State Regulation of Energy and Utilities" [Law No. 1540] as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the National Commission for State Regulation in the Spheres of Energy and Utilities"" [Law No. 2237] on granting powers to the President of Ukraine to ensure the sustainable operation of the National Commission for State Regulation of Energy and Utilities, paragraphs 3, 4 of Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Ensure Constitutional Principles in the Spheres of Energy and Utilities" [Law No. 394], some decrees of the President of Ukraine.

The People's Deputies of Ukraine believe that the Verkhovna Rada of Ukraine has expanded the powers of the President of Ukraine by paragraph 3-1 of Section IV "Final and Transitional Provisions" of the Law No. 1540 as amended by Law No. 2237, paragraphs 3, 4 of Section II "Final and Transitional Provisions" of the Law No. 394, interfered in the discretionary powers of the Cabinet of Ministers of Ukraine, defined by the Constitution of Ukraine, and therefore went beyond its competence. According to the subject of the right to a constitutional petition, the President of Ukraine, having appointed by the disputed decrees members of the National Commission for State Regulation of Energy and Utilities, acted outside his powers under the Constitution of Ukraine, contrary to the provisions of Articles 5.4, 6, 8.2, 19.2, 106.1 and 106.3 of the Constitution of Ukraine.

- the case upon the constitutional petition of 48 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 10.17, paragraph 15 of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine and introduction of enhanced anti-epidemic measures in the area with a significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2" of July 22, 2020 No. 641 as amended [Resolution No. 641].

According to paragraph 10.17 of Resolution No. 641, on the territory of Ukraine for the period of quarantine it is prohibited:

- planned hospitalisation measures by health care institutions, except for:
  - providing medical care due to the complicated course of pregnancy and childbirth;
  - providing medical care to pregnant women, parturients, newborns;
  - providing medical care in specialised departments of health care institutions to patients with cancer;

- providing palliative care in an inpatient setting;
- provision of planned medical care to health care institutions of national level that provide tertiary (highly specialised) medical care, subject to compliance with appropriate sanitary and anti-epidemic measures;
- carrying out other urgent hospitalisation measures, if as a result of their transfer (postponement) there is a significant risk to human life or health."

The petitioners allege that the establishment of restrictions on planned hospitalisation measures violates the constitutional right of citizens to health care and medical assistance<sup>3</sup>.

## CASES UPON THE CONSTITUTIONAL COMPLAINTS

In 202 the following cases were pending the Constitutional Court:

- the case upon the constitutional complaint of Vladyslav Pavlyk regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 294.10 of the Code on Administrative Offenses.

The subject of the right to constitutional complaint claims that the application of the disputed provisions of the Code in the final court decision in his case - the decision of the Court of Appeal of Sumy region of August 13, 2018 - contradicts the rule of law, violates "the right to judicial protection and the right to appeal court".

- the case upon the constitutional complaint of Polina Margo regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs 5.1 and 7 of Article 454 of the Code of Civil Procedure of Ukraine.

According to the complainant, the mentioned provisions of the Code "in fact exclude a whole category of binding decisions from judicial control, make it impossible to review them in order to correct a clear judicial error or the consequences of abuse of rights", and violate "her right of access to court, namely the right to appeal the decision".

- the case upon the constitutional complaint of Volodymyr Kostin regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 82.1 of the Criminal Code of Ukraine.

According to V. Kostin, in pursuance with Article 28 of the Constitution of Ukraine, he has the right to "reduce... life imprisonment and a realistic prospect of release... on the basis of... direct effect of the Constitution and the Convention, regardless of the mechanism of its implementation in Ukrainian law", and the fact that he was sentenced to life imprisonment in a "country where there is no realistic prospect of release from this punishment" contradicts Article 28 of the Constitution".

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<sup>3</sup> In the part of the constitutional petition, it was refused to initiate constitutional proceedings in the case.

- the case upon the constitutional complaint of Ihor Samsin regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the second sentence of Article 54.1 of the Law of Ukraine "On the Judiciary and the Status of Judges".

According to Ihor Samsin, the disputed provision of the Law contradicts the requirements of Article 8 (on the principle of legal certainty as a component of the rule of law), Article 58 (concerning the inadmissibility of retroactive effect of the law in time and prosecution for acts which at the time of their commission were not defined by law as an offense) of the Constitution of Ukraine, as well as Article 126.6.2 of the Basic Law of Ukraine on the content of the concept of "violation of incompatibility requirements by a judge".

According to the complainant, the violations mentioned in ArticleS 1.3 and 3.7 of the Law of Ukraine "On Governmnet Cleansing" may result in prohibitions and be included in the incompatibility of a judge within the meaning of the second sentence of Article 54.1 of the Law of Ukraine "On the Judiciary and the Status of Judges", do not correspond to the constitutional content of this concept, contained in Articles 42.2 and 127.2 of the Basic Law of Ukraine.

The complainant also emphasises that the inclusion in the notion of incompatibility as a ground for dismissing a judge of the prohibition applied to him on the grounds provided for in Articles 1.3, 4.3 (submission or non-submission of an application) and/or Article 3.1, 3.2 and 3.4 of the Law of Ukraine "On Government Cleansing" (holding certain positions)", is a violation of the presumption of innocence, testifies to the appropriation by the parliament of the administration of justice, contradicts Articles 8, 61.2, 62.1, 124.1 and 124.2 of the Constitution of Ukraine. Ihor Samsin considers that as a result of the application by the court of the disputed provision of the Law, his constitutional rights to non-interference in private and family life, to the management of state affairs, to work, guaranteed by Articles 32, 38, 43 of the Constitution of Ukraine have been violated.

- the case upon the constitutional complaint of Oleksandr Melnychenko regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 82.1 of the Criminal Code of Ukraine.

The complainant alleged that the appellate court had violated his "right to life imprisonment by applying national law contrary to the provisions of the Constitution of Ukraine and international law which have priority." The applicant considers that he "under Article 28 of the Constitution... has the right to a review of the life sentence, as well as the right to know on what criteria and when such a review may be carried out".

- the case upon the constitutional complaint of Olena Odintsova regarding the compliance of certain provisions of Article 471.2 of the Customs Code of Ukraine with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional complaint indicates that the Code defines "liability for violation of the established procedure for movement of currency

values across the customs border", however, the application of confiscation for such administrative offenses is unjustified interference with the constitutional right to inviolability of private property, material burden on the person, and also is not commensurate with the damage caused by the offense to the interests of the state."

The petitioner considers that the "sanction" of Article 471 of the Code does not comply with Articles 8.1, 41.1, 41.4 and 41.6 of the Constitution of Ukraine, as it provides for disproportionate, unbalanced and therefore unfair punishment in the form of confiscation of funds, the circulation and transborder transfer of which is not prohibited or restricted by any normative act...", and the application of a penalty in the form of confiscation "is unalterable, inflexible and categorical - so it is disproportionate and unfair, and therefore is not in line with the rule of law", and "excessive property burden on the citizen, does not correspond to public and public interests at all, and is an intervention of the state on peaceful possession of property".

- the case upon the constitutional complaint of Odesteplokomunenergo Private Joint-Stock Company regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of subparagraph "a" of paragraph two of Article 37.6 of the Law of Ukraine "On State Registration of Real Property Rights and Encumbrances".

The subject of the right to constitutional complaint considers that the disputed provision of the Law grants the Ministry of Justice of Ukraine the power to deprive a person of property rights by revoking state registration on the basis of errors made by the state registrar, which violates Article 41 of the Constitution. In addition, in its opinion, the disputed provision of the Law establishes the responsibility of a person - the owner of real estate - for mistakes made by the state registrar as a representative of the state, contrary to Article 3.2 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Ghevork Barseghian regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 485 of the Customs Code of Ukraine.

The subject of the right to constitutional complaint considers that the establishment by the legislator in Article 485 of the Code of absolutely defined sanction (the minimum and maximum limits of the size of the fine are not defined), the impossibility of reducing penalties, the absence of alternative types of sanctions for committing the relevant offense indicates non-compliance with the requirements of part two of Article 61 of the Constitution of Ukraine. According to the complainant, the unrestricted fine for violation of customs rules provided by the disputed provisions of the Code becomes a measure of deprivation of the person of his property, excessive restriction of the right to an adequate standard of living, which does not comply with Articles 41.1 and 48 of the Basic Of the Law of Ukraine.

- the case upon the constitutional complaint of the Public Joint-Stock Company "AZOT" regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 1 of Article 320.3 of the Code of

Commercial Procedure of Ukraine. The court stated, "According to the complainant, the disputed provision of the Code limits the right to judicial protection guaranteed by Articles 55.1 and 55.2 of the Constitution of Ukraine" to the extent incompatible with the essence of this right, as it prohibits review due to exceptional circumstances, which with the application of the unconstitutional norm of the law in favour of the subject of power was resolved property dispute with the subject of private law; preventing, contrary to Article 151-2 of the Constitution of Ukraine, the execution of decisions of the Constitutional Court of Ukraine and restoration of constitutional rights and freedoms violated by the application of an unconstitutional rule of law, the challenged provision of the Code undermines the essence of justice and contradicts the main and illegal encroachments".

The Company notes that the application by the Supreme Court of the provisions of paragraph 1 of Article 320.3 of the Code violated its rights guaranteed by the provisions of Articles 21, 22.2, 41.1, 41.4, 42.1, 55.1, 55.2 and 64.1 of the Constitution of Ukraine".

- the case upon the constitutional complaint of Vasyl Mosiurchak regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 2 of Section XI "Final and Transitional Provisions" of the Law of Ukraine "On Civil Service" of December 10, 2015 No. 889 – VIII, paragraph 5 of Section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Pension Provision" of March 2, 2015 No. 213–VIII.

The applicant considers that the above provisions of Laws No. 889 and No. 213 have significantly narrowed the content of the right to pension provision for civil servants by limiting the previously established guarantees for pension recalculation, as before the entry into force of the disputed norms he was entitled to pension recalculation in accordance with Article 371 of the Law No. 3723.

- the case upon the constitutional complaint of Anatolii Kremenchutskyi regarding the compliance of the provisions of Article 294.10 of the Code on Administrative Offenses with the Constitution of Ukraine (constitutionality).

According to the applicant, the Luhansk Regional Court of Appeal's application of the provisions of Article 294.10 of the Code deprived him of his right to appeal, and the provision of paragraph eight of Article 129.2 of the Constitution of Ukraine violated his other rights, including Article 43 (right to work). and Article 55 (right to judicial protection of human and citizen's rights and freedoms) of the Constitution of Ukraine.

- the case upon the constitutional complaint of Ivan Diadechko regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 88.1.2 and 88.3 of the Law of Ukraine "On the Judiciary and Status of Judges" of June 2, 2016 No. 1402 – VIII as amended.

The applicant considers that the principle of the rule of law was violated as a result of the application of the disputed provisions of the Law in the final court

decision in his case. He argues that Article 88.3 of the Law "limits judicial review by establishing an exhaustive list of formal (rather than substantive) grounds for appealing the decision of the High Qualifications Commission of Judges of Ukraine and deprives of the opportunity to assess the evidence and facts of such review", that testifies the inconsistency of this norm with Article 124.3 of the Constitution of Ukraine, as well as contradicts Article 55.2 and 55.6 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Pavlo Shkoda regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 392.2 and 428.2.2 of the Code of Criminal Procedure of Ukraine.

The applicant considers that the disputed provisions of the Code restrict his right to appeal in appellate and cassation decisions made during the proceedings in the court of first instance, until the decisions provided for in Article 392.1 of the Code.

- the case upon the constitutional complaint of Dmytro Krupko regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 81.1, and 82.1 of the Criminal Code of Ukraine.

According to the applicant, under Article 28 of the Constitution of Ukraine he was entitled to "reduction of life imprisonment and a realistic possibility of release... on the basis of... direct effect of the Constitution and the Convention, regardless of the mechanism of its implementation in the laws of Ukraine", and the fact that he was sentenced to life imprisonment "in a country where there is no realistic prospect of release from life imprisonment, contradicts the guarantees of Article 28 of the Constitution".

- the case upon the constitutional complaint of Viktor Koshevyyi regarding the compliance with the Constitution of Ukraine (constitutionality) of the provision of Article 90 of the Law of Ukraine "On Civil Service" of December 10, 2015 No. 889 – VIII.

The applicant claims that Law No. 889 (Article 90) enshrines the rule that the pension provision of civil servants is carried out in accordance with the Law of Ukraine "On Compulsory State Pension Insurance" of June 9, 2003 No. 1058–IV, Article 42 of which excludes the possibility of recalculation of pensions, in case of increase in the salary of working civil servants, as provided for in Law No. 3723 (Article 371)", which violates his right to social protection and the right to an adequate standard of living, the right to health care and medical assistance. According to the applicant, "using the provisions of Law No. 889–VIII regarding the pension provision of civil servants (Article 90) in the final court decision, the retroactive effect of the provisions of Article 371 of Law No. 3723 was applied, which violated the provisions of Article 58.1 of the Constitution of Ukraine...".

- the case upon the constitutional complaint of Mykola Demianosov regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs three, nine of Section II "Final and Transitional Provisions" of the Law

of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774 – VIII.

The subject of the right to constitutional complaint claims that the regulation of salaries established by the disputed provisions of the Law has led to a reduction of salaries of judges who have not passed the qualification assessment by more than 2 times, and, consequently, to a significant reduction in the amount of material support for such judges and a reduction in the constitutional guarantees of their independence, which contradicts Article 126.1 of the Constitution of Ukraine and violates everyone's right to judicial protection of his rights and freedoms. According to the applicant, the establishment by the provisions of paragraphs three, nine of Section II "Final and Transitional Provisions" of the Law of estimated value for determining the salaries of judges, different from the estimated value established by the law on the judiciary, does not comply with Articles 8.2 and 130.2 of the Constitution.

- the case upon the constitutional complaint of Mykola Naumchuk regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraphs three, nine of Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774– VIII.

Comparative analysis of constitutional complaints of Mykola Demianosov and Mykola Naumchuk gives grounds to conclude that they relate to the same issue - compliance with the Constitution of Ukraine (constitutionality) of paragraphs three, nine of Section II "Final and Transitional Provisions" of the Law, are similar and differ in content only in the descriptive part of court proceedings.

- the case upon the constitutional complaint of Oleh Holiashkin regarding the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402–VIII as amended in general and the provisions of Articles 83.5, 85.4.11a, 86.1, 88.3, 93.1.6, 101.7 of this Law.

According to the author of the application, the disputed provisions of the Law contradict the provisions of Articles 8, 24.1, 24.2, 32.1, 55.1, 55.2, 64.1, 92.1.14, subparagraph 4 of paragraph 161 of Section XV "The Transitional Provisions" of the Constitution of Ukraine, as they give the High Qualifications Commission of Judges of Ukraine the power to regulate the procedure of qualification assessment, which should be regulated exclusively by law, restrict the right of relatives and family members to private and private life and contain purely formal grounds for judicial appeal against the decision of this commission. The applicant raises the issue of declaring the Law as a whole as not compatible with the requirements of Article 8.2 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Viktor Hohin regarding the compliance of Article 81.1 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional complaint alleges that as a result of the application by the courts in his case of Article 81.1 of the Code "the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment was violated", envisaged by Article 28 of the Constitution of Ukraine.

The petitioner considers that Article 81.1 of the Code does not correspond to Article 28.2 of the Constitution of Ukraine "in the context of the lack of a realistic prospect of release from life imprisonment." This is, in particular, due to the fact that the Code does not regulate the issue of parole in the form of life imprisonment or replacement of the unserved part of the sentence with a milder punishment.

- the case upon the constitutional complaint of Joint-Stock Company "Zaporizhzhia Ferroalloy Plant" regarding the compliance of the provisions of Article 320.3.1 of the Code of Commercial Procedure of Ukraine with the Constitution of Ukraine (constitutionality).

According to the petitioner, the impugned provision of the Code restricts the right to judicial protection at the stage of review of court decisions due to exceptional circumstances; prevents the execution of judgments of the Constitutional Court of Ukraine and the restoration of constitutional rights and freedoms violated as a result of the application of an unconstitutional norm; undermines the very essence of justice and contradicts the main purpose of the court in a democratic society - to protect constitutional rights and freedoms from violations and illegal encroachments; makes it impossible to review in connection with the exceptional circumstances of the executed court decision, which by applying an unconstitutional rule of law in favour of the subject of power was resolved property dispute with a subject of private law.

The Company notes that the applied in the final court judgment in its case - the resolution of the Supreme Court in the board of judges of the Commercial Court of Cassation of January 14, 2020 - a separate provision of Article 320.3.1 of the Code, which in case the Constitutional Court of Ukraine finds unconstitutional the law, applied by the court in resolving the case, allows review of judgments in connection with exceptional circumstances only in the event "if the court judgment is not yet executed", does not meet the requirements of Articles 3.2, 8, 13.4, 21, 22.2, 41.1, 41.4, 42.1, 55.1, 55.2, 64.1, 151-2 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Hahik Martirosian regarding the compliance of the provisions of Article 14<sup>2</sup>.1 of the Code of Ukraine on Administrative Offenses with the Constitution of Ukraine (constitutionality).

The petitioner, substantiating his position, considers that the disputed provisions of the Code do not comply with Articles 61, 62 of the Constitution of Ukraine, as they provide for the possibility of bringing to administrative responsibility of vehicle owners even if these persons did not commit an administrative offense.

- the case upon the constitutional complaint of Artem Malofeiev regarding the compliance of the provisions of Article 7.1.2 of the Law of Ukraine "On the

Collection and Accounting of a Single Contribution to the Obligatory State Social Insurance" with the Constitution of Ukraine (constitutionality).

The petitioner notes that the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of 6 December 2016 No. 1774 – VIII as amended, in particular, the first sentence of the paragraph 2 of clause 2 of Article 7.1 of Law No. 2464, namely: the word "has the right to independently" is replaced by the word "obliged", ie the provisions of paragraph 2 of Article 7.1 of Law No. 2464, which were in force before these changes, did not provide for the payer's obligation to determine if he did not receive income (profit), but only grant the right to such a definition. Therefore, according to A.Malofeiev, these amendments to Law No. 2464 narrowed the existing rights of single contributors.

The petitioner also considers that the disputed provisions of Law No. 2464 violate his right to entrepreneurial activity and do not correspond to the "idea of social justice".

- the case upon the constitutional complaint of Olena Koshyk on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 48.7 of the Law of Ukraine "On Civil Service" of December 10, 2015 No. 889–VIII in conjunction with the provisions of Articles 21.1, 21.2, 46.2.8 of this Law.

According to the petitioner, the lack of a mechanism for the return of a civil servant to a previous position after professional training led to a violation of his rights under Articles 19, 21, 22, 43 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Public Joint-Stock Company Joint-Stock Commercial Bank "INDUSTRIALBANK" on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 13.3, 16.3 of the Civil Code of Ukraine.

According to the petitioner, the provisions of Articles 13.3, 16.3 of the Code do not meet the requirements of Articles 8.1, 8.2, 13.4, 41.1, 41.4, 55.1, 66.2, 58.2 of the Constitution of Ukraine.

The Company believes that the provisions of the Code applied in its court proceedings by the courts "do not comply with the principle of the rule of law, their content is set out in a generalised and abstract manner. They do not contain any clear criteria and/or circumstances and/or conditions to be established and assessed by the court in order to classify the actions of a person (especially a party to a private contract) as an abuse of rights".

- the case upon the constitutional complaint of Joint-Stock Company "Zaporizhzhia Ferroalloy Plant" on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 320.3.1 of the Code of Commercial Procedure of Ukraine.

The Company notes that the Supreme Court's application of the provisions of Article 320.3.1 of the Code violated its rights guaranteed by Articles 21, 22.2, 55.1, 55.2 and Article 64.1 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Bohdan Bivalkevych concerning the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs 8, 9, 10 of Section XI "Final and Transitional Provisions" of the Law of Ukraine "On the National Police", Article 49<sup>2.3</sup> of the Labour Code of Ukraine.

The subject of the right to constitutional complaint considers that the provisions of paragraph 8 of Section XI "Final and Transitional Provisions" of the Law deprived him of his right to personal notice of subsequent dismissal and receipt of an offer from the employer for another job at the same enterprise, claims that "this directly contradicts Articles 22, 43 of the Constitution of Ukraine."

The petitioner considers that the Supreme Court in the final court judgment incorrectly applied the provisions of paragraphs 9, 10 of Section XI "Final and Transitional Provisions" of the Law, instead of Article 49<sup>2.3</sup> of the Code, which violated his constitutional right to work, as deprived of guarantees of protection against unlawful dismissal, and also claims that, applying the provisions of paragraphs 9, 10 of Section XI "Final and Transitional Provisions" of the Law, he interpreted these provisions in a manner contrary to Article 22 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Nadiia Kopylova on compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 14<sup>2.1</sup> and 279<sup>1.5</sup> of the Code of Ukraine on Administrative Offenses.

The constitutional complaint alleges that the provisions of Articles 14<sup>2.1</sup> and 279<sup>1.5</sup> of the Code do not comply with Articles 59, 61.2, 62.3 of the Constitution of Ukraine.

The subject of the right to constitutional complaint notes that "the existence of a legal mechanism, such as bringing vehicle owners to justice, even if they have not committed an administrative offense, negates the essence of constitutional rights and freedoms of individual legal responsibility, as it leads to they become declarative and deprived of a real mechanism of protection".

- the case upon the constitutional complaint of Taras Zaiets regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 8.4, 8.5.1, 9.1, 9.9 of the Law of Ukraine "On the High Anti-Corruption Court", Article 88.3 of the Law of Ukraine "On the Judiciary and Status of Judges" of June 2, 2016 No. 1402–VIII.

The subject of the right to constitutional complaint considers that the provisions of Article 88.3 of the Law No. 1402 provide for the possibility of appealing the decision of the High Qualifications Commission of Judges of Ukraine based on constitutional right to judicial protection and the right to appeal the decision of the High Qualification Commission of Judges of Ukraine as a subject of power, which contradicts the provisions of Articles 8, 55, 124.1, 124.3 of the Constitution of Ukraine.

- the case upon the constitutional complaint of Aliona Zabara on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 14<sup>2.1</sup> of the Code of Ukraine on Administrative Offenses, Article 4.2.3.2 of the Law of Ukraine "On Judicial Fees".

The petitioner considers that the provisions of part one of Article 14<sup>2.1</sup> of the Code applied in the final court judgment in her case (Judgment of the Third Administrative Court of Appeal of August 5, 2020) contradicts Articles 22, 24, 61, 62, 129 of the Constitution of Ukraine, as they provide for the possibility of bringing to administrative responsibility persons who have not committed an administrative offense.

- the case upon the constitutional complaint of Private Joint Stock Company "Chernihivoblbud" on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of subparagraph "b" of Article 14.3.1 of the Law of Ukraine "On Ensuring the Implementation of Housing Rights of Dormitory Residents".

In the opinion of the Company, the disputed provision of the Law does not comply with paragraphs one to five of Article 41 of the Constitution of Ukraine, as it allows forced alienation of private property, namely transfer to communal dormitories included in the authorised capital of companies by court decision without consent of their owner, as well as without prior and full reimbursement of the cost of dormitories.

- the case upon the constitutional complaint of Joint-Stock Company "State Savings Bank of Ukraine" on the compliance with the Constitution of Ukraine (constitutionality) of the provision of the first sentence of Article 1050.1 of the Civil Code of Ukraine.

The Bank points out that both at the time of the loan agreement and at the time of its execution, it had a legitimate expectation that it would receive interest for the use of the loan funds until the date of repayment of the loan. At the same time, such legitimate expectations were not made dependent on the good faith behaviour of the borrower (timely or late repayment of the loan). When concluding a loan agreement with a borrower, the bank expected to receive interest until the borrowed amount was credited to its bank account, and in case of delay to receive interest on the loan and the amounts provided for in Article 625 of the Civil Code of Ukraine.

Summarising the arguments set forth in the constitutional complaint, the Bank notes that the provision of the first sentence of Article 1050.1 of the Civil Code of Ukraine "restricts the Lender (after the loan repayment date) to receive interest on loans <...>, as a result of which the Lender was unlawfully deprived of ownership to the law (Article 41 of the Basic Law of the State), restricts its right to entrepreneurial activity, which is not prohibited by law (Article 42 of the Constitution of Ukraine), and therefore, this article of the Civil Code of Ukraine is unconstitutional".

The bank requests to review the disputed provision of the Civil Code of Ukraine in accordance with the provisions of Articles 8.1, 8.2, 13.4, 19.1, 41.1, 41.2, 41.4, 42.1 of the Constitution of Ukraine.

## **2.3. REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS**

### **REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS UPON CONSTITUTIONAL APPLICATIONS**

In 2020, in accordance with the provisions of Article 62 of the Law of Ukraine "On the Constitutional Court of Ukraine" the Constitutional Court of Ukraine adopted 5 rulings on refusal to initiate constitutional proceedings in cases upon constitutional applications in full (3) and in part (2), in particular, on the grounds of:

- non-compliance of the application with the requirements provided by law (3);
- invalidity of the act (its separate provisions) in respect of which the issue of compliance with the Constitution of Ukraine was raised (1);
- issues raised in the petition did not fall under the competence of the Constitutional Court of Ukraine and non-compliance of the petition with the requirements provided by law, at the same time (1).

In 2020, the Constitutional Court of Ukraine adopted 4 rulings on terminating the constitutional proceedings in cases upon constitutional petitions (1 - on the grounds of inconsistency of the application with the requirements provided by law; 2 – given that the issues raised in the petition did not fall under the competence of the Constitutional Court of Ukraine; 1 - on the grounds of inconsistency of the petition with the requirements provided by law, and invalidity of the act (its separate provisions), in respect of which the issue of compliance with the Constitution of Ukraine was raised), at the same time).

In addition, 5 judgments of the Constitutional Court of Ukraine in cases upon the constitutional petitions indicated the termination of constitutional proceedings in the part of the constitutional petition (1 - on the grounds of invalidity of the act (its separate provisions) 1 - on the grounds of non-compliance of the application with the requirements provided by law and the invalidity of the act (its separate provisions), in respect of which the issue of compliance with the Constitution of Ukraine is raised), simultaneously; 1 - on the grounds of non-compliance of the application with the requirements provided by law, invalidity of the act (its separate provisions), in respect of which the issue of compliance with the Constitution of Ukraine was raised), and the availability of a judgment of the Constitutional Court of Ukraine on the same subject matter of the constitutional petition at the same time - 1).

### **REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS UPON CONSTITUTIONAL COMPLAINTS**

In the period from January 1 to December 31, 2020, the Constitutional Court of Ukraine adopted 232 rulings refusing to initiate constitutional proceedings in cases upon constitutional complaints, including 3 adopted by the Second Senate and 229 – by the Panels of Judges.

Most often, Panels of Judges and the Second Senate of the Constitutional Court of Ukraine ruled to refuse to initiate constitutional proceedings upon constitutional

complaints on the grounds of inadmissibility of a constitutional complaint (Article 62.1.4 of the Law) due to its inconsistency with Article 55.6 of the Law of Ukraine "On the Constitutional Court of Ukraine" (failure to substantiate allegations of unconstitutionality of the law of Ukraine (its separate provisions) indicating which of the human rights guaranteed by the Constitution of Ukraine, in the opinion of the subject of the right to constitutional complaint, was violated as a result of the law).

## **2.4. EXECUTION OF THE ACTS OF THE CONSTITUTIONAL COURT OF UKRAINE (execution monitoring)**

In the period from January 1 to December 31, 2020, the Constitutional Court of Ukraine adopted 21 judgments. No opinions were provided.

In the judgments of the Constitutional Court of Ukraine of February 18, 2020 No. 2-r/2020, of March 11, 2020 No. 4-r/2020, of September 16, 2020 No. 11-r/2020 the Verkhovna Rada of Ukraine was obliged or recommended to bring the normative regulation in accordance with the provisions of the Constitution of Ukraine and a respective judgment; in the judgments of the Constitutional Court of Ukraine of January 23, 2020 No. 1-r/2020, of March 11, 2020 No. 4-r/2020, of June 11, 2020 No. 7-r/2020, the procedure for applying the provisions of the laws of Ukraine was also determined and their expiration was postponed. The Judgment of the Constitutional Court of Ukraine of August 28, 2020 No. 9-r/2020 contains an instruction not to extend it to relevant legal relations. In 15 judgments, the provisions of the laws of Ukraine were declared inconsistent with the Constitution of Ukraine or the provisions of the laws of Ukraine or inconsistent with the Constitution of Ukraine without any recommendations for their implementation.

By judgments of the Constitutional Court of Ukraine of January 22, 2020 No. 1-r(I)/2020, of March 17, 2020 No. 5-r/2020, of April 22, 2020 No. 3-r(I)/2020, of July 1, 2020 No. 7-r(I)/2020, of July 14, 2020 No. 8-r/2020, of October 22, 2020 No. 12-r/2020 the disputed provisions of the laws of Ukraine were declared to be in line with the Constitution of Ukraine, and therefore, the above judgments of the Constitutional Court of Ukraine do not require acts on their execution.

## **ON THE STATE OF EXECUTION OF CONSTITUTIONAL COURT JUDGMENTS ADOPTED IN 2020 IN CASES UPON CONSTITUTIONAL PETITIONS**

### **JUDGMENT No. 1-r/2020 of January 23, 2020**

Adopted in the case upon the constitutional petition of 49 People's Deputies of Ukraine on the constitutionality of certain provisions of Section I, paragraph 2 of Section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No. 213-VIII.

The operative part of the Judgment states:

*«1. To declare as unconstitutional Article 13, Article 14.2, paragraphs "b" - "d" of Article 54 of the Law of Ukraine "On Pension Provision" of November 5, 1991 No.1788-XII as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No.213-VIII...»*

*3. There shall be applied Article 13, Article 14.2, items "b" - "d" of Article 54 of the Law of Ukraine "On Pension Provision" of November 5, 1991 No.1788-XII, as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No.213-VIII for persons who worked before April 1, 2015 in the positions specified in these norms, namely:*

*"On preferential terms are entitled to an old-age pension, regardless of the place of last employment:*

*a) full-time workers in underground work, jobs with particularly harmful and particularly difficult working conditions - men - after attaining the age of 50 and with a minimum of 20 years of work experience, of which not less than 10 years in these jobs; women - after attaining the age of 45 and with a minimum of 15 years of work experience, of which not less than 7 years 6 months in these positions.*

*Employees who have at least half the length of work experience in particularly harmful and particularly difficult working conditions shall be granted pensions on preferential conditions with a reduction of the age provided for in Article 12 of this Law by 1 year for every full year of such work for men and by 1 year 4 months - for women;*

*b) full-time workers in other positions with harmful and difficult working conditions - men - after attaining the age of 55 and with a minimum of 25 years of work experience, of which not less than 12 years 6 months in these positions; women - after attaining the age of 50 and with work experience of at least 20 years, of which not less than 10 years in these positions.*

*Employees who have at least half of the work experience with harmful and difficult working conditions, pensions on preferential terms are granted with a reduction of the age envisaged by Article 12 of this Law, by 1 year for every 2 years 6 months of such work for men and for every 2 years of such work - women;*

*c) tractor drivers, directly engaged in the production of agricultural products in collective farms, state farms and other agricultural enterprises - men after attaining the age of 55 and with a total work experience not less than 25 years, of which not less than 20 years in these positions;*

*d) women who work as tractor drivers, drivers of construction, road and handling machines mounted on the basis of tractors and excavators - after attaining the age of 50 and with a total work experience not less than 20 years, of which not less than 15 years in these positions;*

*e) women who work as milkmaids (milking machine operators), pig-breeding operators in collective farms, state farms and other agricultural enterprises - after attaining the age of 50 and with work experience of the said work for not less than 20 years upon the fulfilment of the established service standards;*

*f) women employed during the full season on growing, harvesting and post-harvesting of tobacco - after attaining the age of 50 and not less than 20 years of work experience in these positions;*

*g) textile workers who work on looms and machines - according to the list of industries and professions, approved in the manner determined by the Cabinet of Ministers of Ukraine - after attaining the age of 50 and with work experience of the said work for not less than 20 years;*

*g) women who work in agricultural production and raised five or more children, regardless of age and work experience, in accordance with the procedure established by the Cabinet of Ministers of Ukraine;*

*h) drivers of urban passenger transport (buses, trolleybuses, trams) and heavy-duty vehicles engaged in the technological process of heavy and hazardous industries:*

*men - after attaining the age of 55 years and 25 years of work experience, including at least 12 years 6 months at the specified job; women - after attaining the age of 50 and with work experience of 20 years, including not less than 10 years at the specified job.*

*Depending on working conditions (but not earlier than after attaining the age of 55 for men and 50 years for women) workers of other industries, professions and positions may be granted early pensions based on the performance certification at the expense of enterprises and organisations designated for remuneration of the Pension Fund of Ukraine for the payment of pensions until the employee attains the retirement age provided for in Article 12 of this Law.*

*The procedure for pension provision of persons, who had worked before the enactment of this Law on positions with harmful and difficult working conditions, provided for by the legislation that had been in force earlier, is defined by Article 100 of this Law.*

*"Control over the correctness of the use of lists for preferential pensions and the quality of certification of jobs in enterprises and organisations, preparation of proposals for improving these lists are entrusted to the central executive body that implements state policy in the field of supervision and control over compliance with labor legislation" (Article 13);*

*In the case of underground work experience of less than 10 years for men and less than 7 years of 6 months for women, for each full year of such work, the retirement age provided for in Article 12 of this Law shall be reduced by 1 year (Article 14);*

*"(B) Air traffic control officers who have a certificate of dispatcher:*

*men - after attaining the age of 50 and with a total work experience at least 20 years, of which not less than 12 years 6 months of work on direct flight control of aircraft;*

*women - after attaining the age of 45 and with a total work experience not less than 17 years 6 months, including at least 10 years of work on direct flight control of aircraft.*

*The mentioned employees, who are exempted from work on the direct flight control of aircraft due to health (due to illness), given the length of service for men at least 10 years and for women at least 7 years 6 months, are entitled to a pension in proportion to the time worked.*

*The length of service to air traffic control employees shall also include the work specified in paragraph (a) of this Article.*

*Air traffic control employees with certificates (dispatchers, senior controllers, flight managers) are entitled to a pension regardless of the age if they were employed in these jobs:*

*men - at least 20 years;*

*women - at least 17 years 6 months.*

*The procedure for calculating the length of service for their pensions shall be approved by the Cabinet of Ministers;*

*c) engineering and technical staff - according to the list of positions and works, approved in the manner determined by the Cabinet of Ministers of Ukraine:*

*men - after attaining the age of 55 and with a total work experience in civil aviation of at least 25 years, of which not less than 20 years in the above positions;*

*women - after attaining the age of 50 and with a total work experience in civil aviation of at least 20 years, of which not less than 15 years in these positions.*

*The length of service provided to the engineering and technical staff shall also include the work specified in paragraphs (a) and (b) of this Article;*

*d) flight attendants:*

*men - after attaining the age of 55 and with a total work experience of not less than 25 years, of which not less than 15 years as a flight attendant;*

*women - after attaining the age of 45 and with a total work experience of at least 20 years, of which not less than 10 years as a flight attendant" (paragraphs b-d of Article 54).*

On February 10, 2020, the Verkhovna Rada of Ukraine registered a draft Resolution on Enforcement of Judgments of the Constitutional Court of Ukraine in the Sphere of Social Protection of the Population (Reg. No. 3051).

## **JUDGMENT No. 2-r/ 2020 of February 18, 2020**

Adopted in the case upon the constitutional petition of the Supreme Court of Ukraine on the constitutionality of certain provisions of paragraphs 4, 7, 8, 9, 11, 13, 14, 17, 20, 22, 23, 25 of Section XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No.1402-VIII.

The operative part of the Judgment states:

1. *To declare the provisions of paragraphs 4, 8, 9, 11, 13, 17 of Section XII "Final and Transitional Provisions" of the Law "On the Judiciary and the Status of Judges" to be in conformity with the Constitution (constitutional).*
2. *To declare the provisions of paragraph 7 "and shall be liquidated" in the part of the Supreme Court of Ukraine, paragraph 14 "judges of the Supreme Court of Ukraine", paragraph 25 of Section XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" to be non-conforming to the Constitution of Ukraine (unconstitutional).*
5. *To recommend to the Verkhovna Rada to immediately bring the provisions of the legislation into conformity with the Judgment.*

On June 22, 2020, the Verkhovna Rada of Ukraine registered a draft Law of Ukraine on Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and certain laws of Ukraine on the activities of the Supreme Court and judicial governance bodies (Reg. No. 3711). On November 5, 2020, the draft Law was submitted to the Verkhovna Rada Committee on Legal Policy for completion.

## **JUDGMENT No. 3-r/2020 of February 27, 2020**

Adopted in the case upon the constitutional petition of 46 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of a separate provision of paragraph 26 of section VI "Final and Transitional Provisions" of the Budget Code of Ukraine.

The operative part of the Judgment states:

1. *To declare the specific provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine in the part which stipulates that the rules and provisions of Articles 12, 13, 14, 15 and 16 of the Law "On Status of War Veterans, Guarantees of their Social Protection" shall be applied in the manner and in the amounts established by the Cabinet of Ministers, based on available financial resources of the state and local budgets as well as budgets of the funds of obligatory state social insurance, as such that do not conform to the Constitution of Ukraine (is unconstitutional).*

On March 2, 2020, the Verkhovna Rada of Ukraine registered a draft Law of Ukraine on Amendments to Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine to bring its norms in line with the Judgment of the Constitutional Court of Ukraine of February 27, 2020 No. 3-r/2020 concerning protection of social rights of war veterans (Reg. No. 3136); draft Law of Ukraine on Amendments to the Budget Code of Ukraine to ensure the restoration of social guarantees and benefits to combatants and persons equated to them, persons with disabilities due to war, war participants, persons covered by the Law of Ukraine "On the Status of War Veterans, Guarantees of their Social Protection" of October 22,

1993 No. 3551–XII, and persons who have special merits before the Motherland, in connection with the Judgment of the Constitutional Court of February 27, 2020 No. 3-r/2020 (Reg. No. 3136–1). These draft laws are included in the agenda of the fourth session of the Verkhovna Rada of Ukraine of the ninth convocation in accordance with the Resolution of the Verkhovna Rada of Ukraine of September 1, 2020 No. 828–IX.

## **JUDGMENT No. 4-r/2020 of March 11, 2020**

Adopted in the case upon the constitutional petition of the Supreme Court on the constitutionality of certain provisions of the laws of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No.1402–VIII, "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of October 16, 2019 No.193–IX, "On the High Council of Justice" of December 21, 2016 No.1798–VIII.

The operative part of the Judgment states:

1. *To declare the provisions of Articles 37.1, 94.1, 135.3.3 of the Law of Ukraine "On the Judiciary and the Status of Judges", paragraphs 4, 5, 6, 7, 9, 10 of Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX, Articles 24.3, 28<sup>l</sup>, 31.8, 42.1, 47.3, 48.4 of the Law of Ukraine "On the High Council of Justice" of December 21, 2016 No.1798–VIII as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX, as such that do not comply with the Constitution of Ukraine (are unconstitutional).*

2. *The provisions of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No.1402–VIII as amended by the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX, of the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX, as well as the Law of Ukraine "On the High Council of Justice" of December 21, 2016 No.1798–VIII as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX, which are declared unconstitutional, shall cease to be valid from the date of adoption of this Judgment by the Constitutional Court of Ukraine.*

3. *The relevant provisions of the laws "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402-VIII, as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine regarding the Activity of Judicial Governance Bodies" of October 16, 2019 No. 193 – IX, "On the High Council of Justice" of December 21, 2016 No. 1798-VIII as amended, by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of October 16, 2019 No. 193 – IX shall be applied.*

5. *To recommend to the Verkhovna Rada to immediately bring the provisions of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No.1402–VIII as amended by the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX and the Law of Ukraine "On the High Council of Justice" of December 21, 2016 No.1798–VIII as amended by the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of 16 October 2019, No. 193 – IX into conformity with the Judgment.*

On June 22, 2020, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine on Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and some laws of Ukraine on the activities of the Supreme Court and judicial governance bodies (Reg. No. 3711). On November 5, 2020, the said draft law was submitted to the Verkhovna Rada Committee on Legal Policy for completion.

### **JUDGMENT No. 6-r/2020 of March 26, 2020**

Adopted in the case upon the constitutional petition of 50 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of a specific provision of paragraph 26 of section VI "Final and Transitional Provisions" of the Budget Code of Ukraine.

The operative part of the Decision states:

*1. To declare as running contrary to the Constitution (unconstitutional) a specific provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget in the part which stipulates that the regulations and provisions of Article 81 of the Law "On the Prosecutor's Office" of October 14, 2014 No.1697-VII as amended, shall be applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on the available financial resources of the state and local budgets, as well as budgets of compulsory state social insurance funds.*

*2. The provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget in the part which stipulates that the regulations and provisions of Article 81 of the Law "On the Prosecutor's Office" of October 14, 2014 No.1697-VII as amended, shall be applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on the available financial resources of the state and local budgets, as well as budgets of compulsory state social insurance funds, shall cease to be valid from the date of adoption of this Judgment by the Constitutional Court of Ukraine.*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Judgment.

### **JUDGMENT No. 7-r/2020 of June 11, 2020**

Adopted in the case upon the constitutional petition of 55 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of Article 375 of the Criminal Code of Ukraine.

The operative part of the Judgment states:

*1. To declare Article 375 of the Criminal Code of Ukraine as inconsistent with the Constitution of Ukraine (unconstitutional).*

*2. Article 375 of the Criminal Code of Ukraine, declared unconstitutional, shall cease to be valid six months after the adoption of this Judgment by the Constitutional Court of Ukraine.*

The following draft laws were registered in the Verkhovna Rada of Ukraine:

on May 18, 2020, the draft Law of Ukraine on Amendments to the Criminal Code of Ukraine on Liability for Judge (Judges) for a Biased Judgment (Reg. No. 3500);

on June 2, 2020, the draft Law of Ukraine on Amendments to the Criminal Code of Ukraine on Liability for Judge (Judges) for an Unlawful Judgment of a Judge (Reg. No. 3500–1);

on June 3, 2020, the draft Law of Ukraine on Amendments to Article 375 of the Criminal Code of Ukraine (Reg. No. 3500–2);

on June 4, 2020, the draft Law of Ukraine on Amendments to Article 375 of the Criminal Code of Ukraine Concerning the Intentional Adoption of a Knowingly Unlawful and Unfounded Judgment (Reg. No. 3500–3).

The above draft laws are included in the agenda of the fourth session of the Verkhovna Rada of Ukraine of the ninth convocation in accordance with the Resolution of the Verkhovna Rada of Ukraine of September 1, 2020 No. 828–IX.

### **JUDGMENT No. 9-r/2020 of August 28, 2020**

Adopted in the case upon the constitutional petition of 51 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Decree of the President of Ukraine "On the Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of Ukraine".

The operative part of the Judgment states:

*1. To declare as unconstitutional the Decree of the President of Ukraine "On the Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of Ukraine" of April 16, 2015 No. 218/2015...*

*3. The Judgment of the Constitutional Court of Ukraine does not apply to legal relations arising from the performance of official duties by a person appointed by the Decree of the President of Ukraine "On Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of Ukraine" of April 16, 2015 No. 218/2015.*

The Verkhovna Rada of Ukraine registered:

on October 12, 2020 - the draft Law of Ukraine on Amendments to the Laws of Ukraine Concerning the Powers of the President of Ukraine in Appointing the Director of the National Anti-Corruption Bureau of Ukraine and the Director of the State Bureau of Investigation in order to bring them into line with the Constitution of Ukraine (Reg. No. 4211);

on November 27, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (Reg. No.4437);

on December 1, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (on bringing the provisions into line with the judgment of the Constitutional Court of Ukraine) (Reg. No. 4437–1);

on December 7, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (Reg. No.4437–2);

on December 14, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" on bringing the provisions into line with the anti-corruption legislation of Ukraine (Reg. No. 4437–3).

## **JUDGMENT No. 10-r/2020 of August 28, 2020**

Adopted in the case upon the constitutional petition of the Supreme Court on the constitutionality of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus stage SARS-CoV-2, and stages of mitigation of anti-epidemic measures", the provisions of Articles 29.1 and 29.3 of the Law of Ukraine "On the State Budget of Ukraine for 2020", paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020".

The operative part of the Decision states:

*1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), the provisions of:*

*- Articles 29.1 nad 29.3 of the Law of Ukraine "On the State Budget of Ukraine for 2020" of November 14, 2019 No. 294-IX as amended;*

*- paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" of April 13, 2020 No. 553-IX.*

*2. The provisions of the Law of Ukraine "On the State Budget of Ukraine for 2020" of November 14, 2019 No. 294-IX as amended, the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" of April 13, 2020 No. 553-IX, declared unconstitutional, shall cease to be valid from the date of adoption of this Judgment by the Constitutional Court of Ukraine.*

On November 17, 2020, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020” of November 17, 2020 No. 1006 – IX.

## **JUDGMENT No. 11-r/2020 of September 16, 2020**

Adopted in case upon the constitutional petition of 50 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine".

The operative part of the Judgment states:

*1. To declare the provisions of Articles 1.2, 6.1 on granting the President of Ukraine the power to appoint and dismiss the Director of the National Anti-Corruption Bureau of Ukraine, Article 7.3.1, second paragraph of Article 7.9, second sentence of the second paragraph of Article 26.6 on the appointment by the President of Ukraine of one member of the External Control Commission, Article 31.2 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014 No. 1698-VII as amended, as inconsistent with the Constitution (unconstitutional).*

*2. The provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" of October 14, 2014 No. 1698-VII as amended, which are declared unconstitutional, shall cease to be valid three months after the adoption of this Judgment by the Constitutional Court...*

*4. The Verkhovna Rada shall immediately bring the provisions of the legislation in line with this Judgment.*

The Verkhovna Rada of Ukraine registered:

on September 2, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" to bring it into line with the Constitution of Ukraine (Reg. No. 4025);

on September 16, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" to bring certain provisions into line with the Constitution of Ukraine (Reg. No. 4025–1) and the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" on bringing certain provisions into line with the Constitution of Ukraine (Reg. No. 4025–2);

on November 27, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (Reg. No. 4437);

on December 1, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (on bringing the provisions into line with the Judgment of the Constitutional Court of Ukraine) (Reg. No. 4437–1);

on December 7, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" (Reg. No. 4437–2);

on December 14, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" on bringing the provisions into line with the anti-corruption legislation of Ukraine (Reg. No. 4437–3).

## **JUDGMENT No. 13-r/2020 of October 27, 2020**

Adopted in the case upon the constitutional petition of 47 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On Prevention of Corruption", the Criminal Code of Ukraine.

The operative part of the Decision states:

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional):*

*- paragraphs 6, 8 of Article 11.1, paragraphs 1, 2, 6-10<sup>l</sup>, 12, 12<sup>l</sup> of Article 12.1, paragraphs two to five of Article 12, Article 13.2, Article 13<sup>l</sup>.2, Article 35, paragraphs two, three of Article 47.1, Articles 48–51, 52.2, 52.3, 65 of the Law of Ukraine "On Prevention of Corruption" of October 14, 2014 No. 1700 – VII as amended;*

*- Article 366<sup>l</sup> of the Criminal Code of Ukraine".*

The Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Establishment of Liability for Declaring Inaccurate Information and Failure of a Declarant to Declare a Declaration of a Person Authorised to Perform State or Local Self-Government Functions" of December 4, 2020 No. 1074–IX, as well as the Law of Ukraine "On Amendments to the Law of Ukraine "On Prevention of Corruption" on Restoration of the Institutional Mechanism for Prevention of Corruption" of December 15, 2020 No. 1079–IX.

Also the Verkhovna Rada of Ukraine registered draft laws:

On October 30, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on monitoring the lifestyle of judges and in order to bring its norms in line with the Judgment of the Constitutional Court of Ukraine of October 27, 2020 No. 13-r/2020 (Reg. No. 4292), as well as the draft Law of Ukraine on Amendments to the Law of Ukraine "On Prevention of Corruption" to bring its norms in line with the Judgment of the Constitutional Court of Ukraine of October 27, 2020 No. 13-r/2020 and to regulate the activities of the National Anti-Corruption Agency (Reg. No. 4293);

On November 2, 2020 - the draft Law of Ukraine on the resumption of certain provisions of the Law of Ukraine "On Prevention of Corruption" and the Criminal Code of Ukraine (Reg. No. 4304); draft Law of Ukraine on Amendments to the Law of Ukraine "On Prevention of Corruption" (concerning the powers of the National Agency for Prevention of Corruption) (Reg. No. 4300) and draft Law of Ukraine on Amendments to the Criminal Code of Ukraine to bring its norms in line with the Judgment of the Constitutional Court of Ukraine of October 27, 2020 No. 13-r/2020 (Reg. No. 4307); draft Law of Ukraine on Amendments to the Criminal Code of Ukraine (on criminalisation of evasion of declaring reliable information by persons authorised to perform the functions of the state or local self-government) (Reg. No. 4301); draft Law of Ukraine on Amendments to the Law of Ukraine "On Prevention of Corruption" (concerning the powers of the National Agency for Prevention of Corruption) (Reg. No. 4300);

On November 3, 2020 - the draft Law of Ukraine on Amendments to the Code of Ukraine on Administrative Offenses in view of the Judgment of the Constitutional Court of Ukraine of October 27, 2020 No. 13-r/2020 (Reg. No. 4309); draft Law of Ukraine on Amendments to the Criminal and Criminal Procedure Codes of Ukraine in view of the Judgment of the Constitutional Court of Ukraine of October 27, 2020 No. 13-r/2020 (Reg. No. 4310); the draft Law of Ukraine on Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on Determining the Legal and Organisational Principles of the Functioning of the Corruption Prevention System in Courts (Reg. No. 4292-1); draft Law of Ukraine on Amendments to the Code of Ukraine on Administrative Offenses to Determine Liability for Violation of Financial Control Requirements by Judges (Reg. No. 4312);

On November 5, 2020 - the draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine Concerning Granting the National Agency for Prevention of Corruption the Powers of a Public Authority with a Special Status and Subordinating its Activities to the Interests of the People of Ukraine (Reg. No. 4329);

On November 13, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On Prevention of Corruption" on Certain Issues of Activity of the National Agency for the Prevention of Corruption (Reg. No. 4293-1);

On November 18, 2020 - the draft Law of Ukraine on Amendments to the Law of Ukraine "On Prevention of Corruption" on certain issues of the National Agency for the Prevention of Corruption (Reg. No. 4300-1);

On December 26, 2020 - the draft Law of Ukraine on Amendments to the Criminal Code of Ukraine on Liability for Declaring False Information and Failure to File a Declaration (Reg. No. 4548).

**ON THE STATUS OF EXECUTION OF THE CONSTITUTIONAL COURT  
JUDGMENTS ADOPTED IN 2020 IN THE CASES UPON CONSTITUTIONAL  
COMPLAINTS**

**JUDGMENT No. 2-r(II)/2020 of April 15, 2020**

Adopted in the case upon the constitutional complaints of Nadiia Melnychuk, Liliia Hryhorieva and Maryna Klimenko regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of subparagraph 1 of paragraph 28 of section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine".

The operative part of the Judgment states:

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), the provisions of subparagraph 1 of paragraph 28 of section II of the Law of Ukraine "On Prevention of Financial Catastrophe and Creation of Preconditions for Economic Growth in Ukraine" of March 27, 2014 No. 1166-VII".*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the adoption of the Judgment.

**JUDGMENT No. 4-r(II)/2020 of June 17, 2020**

Adopted in the case upon the constitutional complaint of Viacheslav Peskach regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Articles 307.3 and 309.3 of the Code of Criminal Procedure of Ukraine.

The operative part of the Judgment states:

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), the provisions of Article 307.3 of the Code of Criminal Procedure of Ukraine on the prohibition of appeals against the decision of the investigating judge on the results of the complaint of inaction of the investigator, prosecutor, which implies failure to enter information on criminal offenses in the Unified Register of investigations after receiving the application, notification of a criminal offense."*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the the adoption of the Judgment.

**JUDGMENT No. 5-r(II)/2020 of June 18, 2020**

Adopted in the case upon the constitutional complaint of the citizen of Ukraine Olha Levchenko regarding the compliance with the Constitution of Ukraine (constitutionality) of the provision of paragraph 5 of section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No. 213– VIII.

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), the provision of paragraph 5 of section III "Final Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Pension Provision" of March 2, 2015 No. 213-VIII".*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the the adoption of the Judgment.

### **JUDGMENT No. 6-r(II)/2020 of June 24, 2020**

Adopted in the case upon the constitutional complaints of Eduard Kariakin, Limited Liability Company "Eco-Coal Trading House of Ukraine" regarding compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 79.1 of the Law of Ukraine "On Banks and Banking Activity".

The operative part of the Judgment states:

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), a separate provision of Article 79.1 of the Law of Ukraine "On Banks and Banking Activity" of December 7, 2000 No. 2121-III as amended, namely "which are covered by the supervisory activities of the National Bank of Ukraine".*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the the adoption of the Judgment.

### **JUDGMENT No. 8-r(I)/2020 of July 22, 2020**

Adopted in the case upon the constitutional complaint of the Joint-Stock Company "Closed-End Non-Diversified Venture Corporate Investment Fund "AVANPOST" concerning the compliance with the Constitution of Ukraine (constitutionality) of paragraph eight of Article 11.5 of the Law of Ukraine "On Management of State Property".

The operative part of the Judgment states:

*"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional), paragraph eight of Article 11.5 of the Law of Ukraine "On Management of State Property" of September 21, 2006 No. 185-V as amended".*

As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the the adoption of the Judgment.

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*As of December 31, 2020, the Verkhovna Rada of Ukraine has not adopted any acts in view of the adoption of the judgments by the Constitutional Court of Ukraine before January 1, 2020, namely: No. 21-rp/2009 as of September 15, 2009, No. 25-rp/2009 as of October 7, 2009, No. 23-rp/2010 as of December 22, 2010, No. 6-rp/2011 as of June 16, 2011, No. 18-rp/2012 as of December 13, 2012, No. 2-rp/2014 as of March 14, 2014, No. 2-rp/2016 as of June 1, 2016, No. 7-rp/2016 as of December 20, 2016, No. 8-r/2018 as of October 11, 2018, No. 11-r/2018 as of December 4, 2018, No. 12-r/2018 as of December 18, 2018, No. 13-r/2018 as of December 20, 2018.*

## **2.5. ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE REGARDING THE EXERCISE OF CONSTITUTIONAL CONTROL IN 2020: SPECIFIC CONCLUSIONS**

### **SIGNIFICANCE**

Ensuring the supremacy of the Constitution of Ukraine through the exercise of constitutional review as the main functional task of the Constitutional Court of Ukraine, cannot be measured by quantitative indicators from the point of view of its implementation. Finally, quantitative indicators (which are cases of constitutional proceedings) may indicate, and only to some extent, certain trends in the legislative process, which does not necessarily affect the constitutionality of regulations that have become the subject of constitutional review. After all, the very initiation of constitutional proceedings, regardless of its forms, is conditioned by the subject's interpretation of the right to appeal to the Constitutional Court of Ukraine.

It is known that the norms of the Constitution of Ukraine are developed, first of all, in the legislative acts adopted by the Verkhovna Rada of Ukraine - the only body of legislative power. At the same time, it is extremely important to clarify the true content of the norms of the Constitution of Ukraine while assessing the normative legal act as a subject of constitutional control. Therefore, the main criterion for assessing the effectiveness of the Constitutional Court of Ukraine is the significance of issues that have been the subject matter of constitutional review from a constitutional and legal point of view.

### **REGARDING THE SUBJECT MATTER OF CONSTITUTIONAL REVIEW**

The following norms were most often examined in constitutional proceedings:

- wage legislation; legislation on pensions and other social benefits;
- legislation regulating judicial self-government;
- legislation on the judiciary and the administration of justice, in particular the establishment and operation of the Supreme Court;
- criminal law legislation;
- budget legislation;
- legislation on preventing and combating corruption.

The need for such consideration was conditioned by a real or probable, in the opinion of the subject of the right to appeal to the Constitutional Court of Ukraine, violation of, in particular:

- the right to social protection (including prosecutors; combatants and persons equated to them, persons with disabilities as a result of war, participants in war; citizens who have the right to retire on preferential terms if they have special experience);
- the right to receive a judge's remuneration and a monthly lifetime allowance;
- the right of citizens to judicial protection, in particular in terms of ensuring the principle of institutional continuity; ensuring that the state enforces final court decisions;

- the right to receive salaries, cash benefits for employees, servants and officials of budgetary institutions (including public authorities and other state bodies, local self-government bodies) in full.

The subject matter of constitutional control in the course of constitutional proceedings was also the issues of proper implementation by public authorities of their constitutional competence, observance of the principles of separation of powers, activities of public authorities and local self-government bodies, their officials only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine.

Eventually, observance by the subject of law-making of a number of constitutional principles, withdrawal from which causes violations of constitutional rights and freedoms, was a subject matter of constitutional control. The acts of the Constitutional Court of Ukraine adopted in 2020 most often mentioned violations of the rule of law (including its components such as the principles of proportionality, fairness, legal certainty, predictability and legitimate expectations); the principle of institutional continuity of the court; principles of separation of powers, independence and inviolability of judges, prohibition of narrowing the content and scope of human and citizen's rights and freedoms, as well as the imbalance of checks and balances, which may weaken constitutional guarantees of human and citizen's rights and freedoms and negatively affect the stability of constitutional system, the actual change in the form of government provided by the Constitution of Ukraine.

The constitutional complaints of individuals most often raised the following issues:

- lack of possibility to appeal court decisions in cassation (mainly in cases of insignificant complexity in administrative proceedings and minor cases in civil proceedings), as well as the powers of the court of cassation, in particular the Grand Chamber of the Supreme Court;

- assignment and payment of one-time monetary benefits (including in case of disability and due to change of disability group), granting the status of a war invalid, awarding a pension on preferential terms, recalculation of pensions, including servicemen, civil servants.

The constitutional complaints also concerned:

- determination of the jurisdiction of criminal proceedings to the Supreme Anti-Corruption Court, appeal at the stage of pre-trial proceedings notice of suspicion, challenge in appellate and cassation decisions of investigative judges, revision of life imprisonment;

- realisation of the right to work (regarding the grounds and procedure for dismissal of employees, the amount of compensation for the delay in payment upon dismissal);

- the status of judges (on appealing decisions of the High Council of Justice);

- cases of administrative offenses (concerning the prosecution of persons who own vehicles, appeals in cassation of the decisions of the court of appeal in cases of administrative offenses);

- housing and communal services (regarding the obligation to enter into a contract for the provision of housing and communal services and pay for housing and communal services within the time limits established by the contract or the law, as well as regarding the conditions for receiving benefits by former law enforcement officers).

- court fees (on the obligation to pay court fees and conditions of exemption (benefits) from court fees (including when appealing against decisions on administrative offenses, in cases at the appeal of consumers, participants in hostilities) and others;

- acquisition and termination of property rights.

Thus, individuals applied to the Constitutional Court of Ukraine with applications mainly on the implementation of the right of everyone to a court decision review (particularly in cassation in minor cases in civil proceedings), appeals against decisions of investigating judges, determination of jurisdiction of criminal proceedings to the Supreme Anti-Corruption Court, as well as the provision and payment of housing and communal services. A significant number of constitutional complaints concerned social issues in order to protect the rights established in legislative acts that have changed, in particular, regarding the social (pension) provision of certain categories of citizens (servicemen, civil servants).

Legal entities in constitutional complaints mostly raised the issue of compliance of the provisions of laws relating to commercial litigation (powers of the court of cassation, including the Grand Chamber of the Supreme Court, review of judgments in exceptional circumstances) and others with the Constitution of Ukraine.

## **PRELIMINARY REVIEW OF APPLICATIONS FILED WITH THE COURT**

By the provisions of the Law, the Secretariat of the Court is authorised to carry out a preliminary review of applications lodged with the Court (paragraph 6 of Article 44.2, Article 57.2).

If the constitutional complaint does not meet the requirements of the Law, the Head of the Secretariat of the Court returns it to the subject of the constitutional complaint (Article 57.3 of the Law).

From January 1 to December 31, 2020, the Court received 563 constitutional complaints, in respect of which the Secretariat of the Court carried out a preliminary review for compliance with the requirements of the Law.

Among 563 constitutional complaints received by the Court as of December 31, 2020, 249 constitutional complaints (44%) complied with the requirements of the Law and were distributed among the judges of the Court in accordance with the Law and in the manner prescribed by the Court's Rules of Procedure, 312 constitutional complaints (56%) were returned (with appropriate explanations and an indication of the possibility of re-appeal in compliance with the requirements of the Law) to the subjects of the right to constitutional complaint as such that did not meet the

requirements of the Law; 2 constitutional complaints were pending before the Secretariat.

The above statistics show that more than half of all constitutional complaints are returned at the stage of their preliminary review by the Secretariat of the Court, which means that more than half of the applications contain obvious deficiencies and non-compliance with the requirements of the Law.

Cases in which complainants rectify deficiencies identified by the Secretariat of the Court during a preliminary review of constitutional complaints and, as a result, the Court adopts acts in their favor are not uncommon. From January 1 to December 31, 2020, the complainants re-filed 130 constitutional complaints with the Court. 78 of them met the requirements of the Law in form and were distributed among the judges of the Court; upon 6 of them constitutional proceedings were initiated<sup>4</sup> (among which upon 1 constitutional complaint the constitutional proceedings were terminated<sup>5</sup>).

Also in 2020, constitutional proceedings were initiated and a decision was adopted upon 1 constitutional complaint, which was re-submitted to the Court in 2019<sup>6</sup>.

This information indicates that in cases when the constitutional complaint has certain prospects, but at the same time it has serious deficiencies, it is more acceptable for the applicant to receive a notification from the Secretariat of the Court with the returned constitutional complaint and promptly correct errors rather than obtain a decision on refusal to initiate proceedings, which is not subject to appeal.

Thus, the mechanism of legislative regulation of preliminary review of constitutional complaints by the Secretariat of the Court and the relevant law enforcement practice on these issues not only help to avoid overburdening the Court with complaints that do not meet the requirements of the Law, but also allow to bring it in line with the requirements of the Law, which is a necessary condition for further consideration of the constitutional complaint.

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<sup>4</sup> These are Ruling of the First Board of Judges of the First Senate of the Constitutional Court of Ukraine of March 4, 2020 No. 48-1(I)/2020, Ruling of the First Board of Judges of the Second Senate of the Constitutional Court of Ukraine of April 29, 2020 No. 88-1(II)/2020, Ruling of the Second Board of Judges of the First Senate of the Constitutional Court of Ukraine of June 19, 2020 No. 128-2(I)/2020, Ruling of the First Board of Judges of the First Senate of the Constitutional Court of Ukraine of September 23, 2020 No. 211-1(I)/2020, Ruling of the Third Board of Judges of the First Senate of the Constitutional Court of Ukraine of September 29, 2020 No. 216-3(I)/2020, Ruling of the Second Board of Judges of the Second Senate of the Constitutional Court of Ukraine of October 6, 2020 No. 221-2(II)/2020.

<sup>5</sup> Ruling of the Second Senate of the Constitutional Court of Ukraine of September 30, 2020 No. 20-up(II)/2020. URL: [http://ccu.gov.ua/sites/default/files/docs/20\\_yn2\\_2020.pdf](http://ccu.gov.ua/sites/default/files/docs/20_yn2_2020.pdf) (03.02.2021).

<sup>6</sup> Decision of the First Senate of the Constitutional Court of Ukraine of July 22, 2020 No. 8-r(I)/2020 in the case upon the constitutional complaint of the Stock Company "Closed Non-Diversified Venture Corporate Investment Fund "AVANPOST" on compliance of paragraph 8 of Article 11.5 of the Law of Ukraine "On Management of State Property" with the Constitution of Ukraine (constitutionality). URL: <https://zakon.rada.gov.ua/laws/show/va08p710-20#Text> (03.02.2021).

### **III. EXTRAJUDICIAL ACTIVITIES**

Annually, the Constitutional Court organises and holds a number of events dedicated to current issues of constitutional justice, which are attended by leading scholars, government officials, international experts, representatives of international organisations and foundations, as well as members of the media and the public.

#### **3.1. EVENTS AND ACTIVITIES**

The events and activities held at the Constitutional Court of Ukraine in 2020 were broadly covered through official channels of communication of the Constitutional Court of Ukraine. By providing the timely and quality spread of information, the Constitutional Court of Ukraine aims to provide the public with trustful information on its activities from the original source.

In view of the COVID-19 pandemic and the quarantine measures the number of events and activities held at the Constitutional Court of Ukraine in 2020 was objectively lesser than in previous years. At the same time it was an impetus to improve the existing and search the new forms of cooperation between the Constitutional Court of Ukraine and target audiences. In particular, in the frame of long-standing partnership of the Constitutional Court of Ukraine and the OSCE Project Co-ordinator in Ukraine and with financial support of the Government of the Federal Republic of Germany a Training Centre on Constitutional Law was inaugurated which allowed to hold expert discussions, trainings, to organise events by videoconference, training for employees of the Secretariat of the Constitutional Court of Ukraine on issues of the constitutional complaint, as well as to organise the work of the Research and Advisory Council of the Constitutional Court of Ukraine using Skype conference.



From left to right: Chairman of the Constitutional Court of Ukraine O.Tupytskyi, OSCE Project Co-ordinator in Ukraine, Ambassador Henrik Villadsen, National Legal Adviser OSCE Project Co-ordinator in Ukraine O.Vodiannikov, Head of the Secretariat of the Constitutional Court of Ukraine V.Beschastnyi at the Inauguration of the Training Centre on Constitutional Law  
(Kyiv, 19 June 2020)

*“Thanks to the work of the Training center, we have the opportunity to organise expert discussions on topical issues with the participation of judges, lawyers, scholars and human rights activists in video conferencing format. In addition, it will allow us to involve experts in discussions both at the national and international levels without spending money from the state budget”.*

**Oleksandr Tupytskyi,**  
*Chairman of the Constitutional Court of Ukraine*

During the reporting year, the Constitutional Court of Ukraine in co-operation with its main partners organised and held the following events:

1. Research and practical event “Innovations in the Sphere of Human Rights: International and European Experience for Ukraine” – discussion of crucial changes in the sphere of understanding of human rights by learning the contemporary global and European legal experience. The event was attended by the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi, judges of the Constitutional Court of Ukraine Serhiy Holovaty, Viktor Kolisnyk, Vasyl Lemask, Serhiy Sas and Petro Filiuk.

*From left to right: judges of the Constitutional Court of Ukraine P.Filiuk, V.Lemak, V.Kolisnyk, S.Sas, V.Horodovenko, First Deputy Head of the Secretariat of the Constitutional Court of Ukraine L.Biriuk and the Court staff during the scientific and practical event “Innovations in the Sphere of Human Rights: International and European Experience for Ukraine” (Kyiv, January 22, 2020)*



*The participants on the scientific and practical event “Innovations in the Sphere of Human Rights: International and European Experience for Ukraine” (Kyiv, January 22, 2020)*

2. On the eve of the celebration of the 24<sup>th</sup> anniversary of the adoption of the Constitution of Ukraine, the “**Constitutional Week**” was held at the Constitutional Court of Ukraine. In its framework a number of events was held in which presidents and judges of foreign bodies of constitutional jurisdiction, leading domestic and international experts took part. Among these events:
- Online seminar “Constitutional Judiciary: New Opportunities and Peculiarities of Their Implementation” within the discussion platform “Constitutionalism in Ukraine: Historical Achievements and Further Perspectives”, held on the occasion of the anniversary of the introduction of the institute of constitutional complaint;
  - Online seminar "Constitutional Judiciary: New Opportunities and Peculiarities of Their Implementation". The co-organisers of the event were two higher education institutions displaced from Donetsk and Luhansk regions, namely the Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine and the Luhansk State University of Internal Affairs named after Eduard Didorenko.

*“The main task of the Constitutional Court of Ukraine was and remains to ensure the supremacy of the Constitution and to protect the constitutional human and civil rights and freedoms.”*

*Oleksandr Tupytskyi,  
Chairman of the Constitutional Court of Ukraine*

During the event there were discussed issues constitutional jurisdiction as a means of legal protection rights and freedoms, constitutional and legal foundations of ensuring the rights of internally displaced person in the municipal aspect and considered the constitutional complaint as a domestic means of legal protection of human rights. The experience of three years of the functioning of constitutional complaint demonstrated that the majority of issues referred to the Constitutional Court are related to social protection of citizens, with issues of social protection of internationally displaced persons and vulnerable categories of population taking not the last place;



From left to right: Deputy Head of the Legal Department of the Secretariat of the Constitutional Court of Ukraine S. Solotkyi, retired Judge of the Constitutional Court of Ukraine V. Kampo, Chairman of the Constitutional Court of Ukraine O. Tupytskyi, Head of the Secretariat of the Constitutional Court of Ukraine V. Beschastnyi, Head of the Department for Preliminary Examination of Constitutional Complaints of the Secretariat of the Constitutional Court of Ukraine V. Zaporozhets during the online seminar "Constitutional Justice: New Opportunities and Features of their Implementation" (Kyiv, June 22, 2020)

- Online Quiz "Constitution in My Life". The participants were law students of Luhansk State University of Internal Affairs named after Eduard Didorenko and the Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine;
- Online Seminar "Constitutional Justice: Current Issues in Theory and Practice" during which the participants and the audience consisted of law students of the Kyiv Minor Academy of Sciences discussed a number of issues related to law application practice of the Constitutional Court related to constitutional complaintS.
- International Online Conference „Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice and the Problems of Interpretation in Constitutional Adjudication“ on the occasion of the 24<sup>th</sup> anniversary of the Constitution of Ukraine and the 30<sup>th</sup> anniversary of the Venice Commission in the frame of the ‘Constitutional Week’ in order to analyse the concepts of the rule of law and the constitutional jurisprudence.

During the online conference over 20 presentations were delivered and crucial issues were discussed notably on constitutional control as a mechanism of resolution of conflict of interpretations, objects and subjects of interpretation in constitutional proceedings upon constitutional petitions, appeals and complaints. It was emphasised that the opinions of the Venice Commission have played an important role in the issues of legal interpretation which for three decades have been a strong waymark for development of law and for its interpretation in a manner which complies to the rule of law.



From left to right: judges of the Constitutional Court of Ukraine V. Horodovenko, I. Zavhorodnia, S. Holovaty, O. Tupytskyi, V. Kolisnyk, H. Yurovska at an International Online Conference „Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice and the Problems of Interpretation in Constitutional Adjudication“ (Kyiv, June 25, 2020)

The conference brought together 150 participants, including Chairman and judges of the Constitutional Court of Ukraine, former judges of the Constitutional Court of Ukraine, representatives of bodies of state power, judges of foreign constitutional bodies (Moldova, Lithuania, Kyrgyzstan, Kazakhstan, Germany), leading domestic and foreign experts as well as representatives of international organisations and foundations.

*„In 1996 there appeared not only the genuine object of the protection on the part of the body of constitutional justice (the Ukrainian Constitution as a whole document in which basic values of the democratic society were stipulated and for the first time the national catalogue of human and civil rights were determined) but there was established (for the first time in the history of our state) a body of constitutional justice, which is the Constitutional Court of Ukraine“*

*Oleksandr Tupytskyi,  
Chairman of the Constitutional Court of Ukraine*

The Chairman of the Verkhovna Rada of Ukraine Dmytro Razumkov welcomed the participants, and stressed the constructive cooperation of the Verkhovna Rada of Ukraine with the Constitutional Court of Ukraine, the results of which are important for the quality legislative work of the Parliament. The President of the European Commission for Democracy through Law Gianni Buquicchio emphasised the effective work of the Constitutional Court of Ukraine in the protection of human and civil rights as well as the constitutional principles and values.



Chairman of The Verkhovna Rada of Ukraine D. Razumkov during the International Online Conference „Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice and the Problems of Interpretation in Constitutional Adjudication“ (Kyiv, June 25, 2020)



President of the European Commission "For Democracy through Law" G. Buquicchio during the International Online Conference „Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice and the Problems of Interpretation in Constitutional Adjudication“ (Kyiv, June 25, 2020)

Upon the results of the conference a collection of presentations was published which contains contributions of more than 50 authors.

The collection of materials of the International Online Conference „Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice and the Problems of Interpretation in Constitutional Adjudication“ (Kyiv, 2020)



3. Round table - presentation (online) of the third publication of the materials of Consultative Council of European Judges (CCJE) supported by the Council of Europe project “Support to the Implementation of the Judicial Reform in Ukraine“ which is an informative reference book on European standards and European practice for all lawyers of Ukraine.



From left to right: judges of the Constitutional Court of Ukraine V. Horodovenko, O. Tupytskyi, O. Pervomayskyi, Head of the Secretariat of the Constitutional Court of Ukraine V. Beschastnyi during the online presentation of the third publication of the materials of Consultative Council of European Judges (CCJE) (Kyiv, October 26, 2020)

The Constitutional Court of Ukraine was represented by the Court Chairman Oelksandr Tupytskyi, judges Oleh Pervomaiskyi, Halyna Yurovska and Viktor

Horodovenko who is a member of the Consultative Council of European Judges (CCJE) and represents Ukraine in this body. During the event main provisions of the CCJE documents in the light of the judicial reform in Ukraine, standards and recommendations of the Council of Europe in the field of justice and their implementation in Ukraine were discussed.

*"The CCJE opinions are an important tool for Ukrainian judges in the administration of justice, as evidenced by the 31,120 court decisions in which these opinions have been applied."*

**Viktor Horodovenko,**  
*judge of the Constitutional Court of Ukraine*

4. Scientific and practical online conference “Doctrinal Approaches in the Activity of the Constitutional Court of Ukraine” attended by the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi, judges of the Constitutional Court of Ukraine Serhiy Holovaty, Viktor Horodovenko, Viktor Kolisnyk, Vasyl Lemak, Oleh Pervomaiskyi, Halyna Yurovska, former judges of the Constitutional Court of Ukraine, leading national scholars and international experts. During the conference the following topics were discussed: “The doctrine of separation of powers: modern contexts”, “Principles of the welfare state and protection of human dignity: interpenetration and guarantee system”, “Rule of law as an instrument of constitutional protection of human rights”.



From left to right: retired judge of the Constitutional Court of Ukraine M. Kostytskyi, judge of the Constitutional Court of Ukraine V. Horodovenko during the scientific and practical online conference “Doctrinal Approaches in the Activity of the Constitutional Court of Ukraine” (Kyiv, October 28, 2020)

Upon the results of the conference a collection of presentations was published which contains contributions of more than 30 authors.



A collection of materials of the scientific and practical online conference “Doctrinal Approaches in the Activity of the Constitutional Court of Ukraine” (Kyiv 2020)

5. The second assembly of the Research and Advisory Board of the Constitutional Court of Ukraine, during which practical issues of interaction of the Constitutional Court of Ukraine and the Research and Advisory Board of the Constitutional Court of Ukraine as well as forms and frames of cooperation within the Council were discussed.

*“The main task of the Research and Advisory Board is to draft research opinions to enable full and comprehensive consideration of cases by the body of constitutional jurisdiction in Ukraine”*

*Viktor Kolisnyk,  
judge of the Constitutional Court of Ukraine*

6. Webinar for the employees of the Secretariat of the Constitutional Court of Ukraine on learning the functioning of the constitutional complaint in the Republic of Latvia, organised by the Constitutional Courts of Ukraine and the Republic of Latvia in the frame of the project "Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine".

7. Online training on improvement of work related to constitutional complaints and discussion of issues of effective management of the process of processing the constitutional complaints. During the event there were discussed a number of practical recommendations, which are used by the staff of bodies of constitutional jurisdiction when preparing analytical opinions and reference documents in processing constitutional complaints, improvement of work related to their analysis and the criteria of determining the public interest and relevant criteria of admissibility of constitutional complaint.

### **3.2. PARTICIPATION IN SCIENTIFIC EVENTS ORGANISED BY PARTNERS OF THE CONSTITUTIONAL COURT OF UKRAINE**

During the reporting period, the Chairman and judges of the Constitutional Court of Ukraine were invited to participate in various scientific and scientific and practical events.

- III Judicial Forum of the Bar Association of Ukraine, which brought together judges and advocates, representatives of bodies of state power, scholars and prominent lawyers to discuss the current state and prospects of the judicial system of Ukraine. The participants of the online forum addressed a number of important and crucial issues, in particular on the judicial reform, procedural novelties, access to justice. The Chairman of the Constitutional Court of Ukraine emphasised that the activities of the body of constitutional jurisdiction is aimed at ensuring the stability and inviolability of the constitutional order as well as the protection of the constitutional rights of citizens.

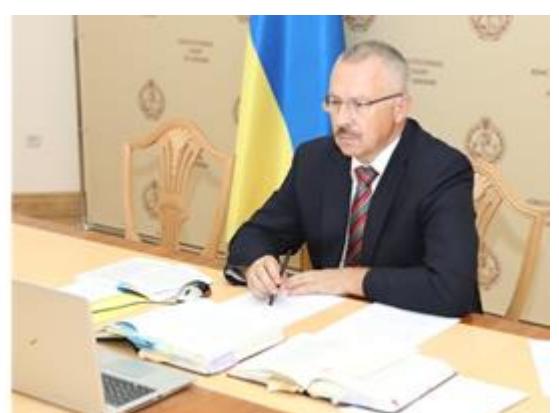
*“The legal community of Ukraine has to come together in order to create a legal state which will effectively protect human and citizen’s rights and freedoms”*

*Oleksandr Tupytskyi,  
Chairman of the Constitutional Court of Ukraine*

- Round table on Administrative Proceedings of Ukraine: Current State and Challenges during which a number of crucial issues on the formation, the state and improvement of administrative proceedings in Ukraine was discussed.
- Practical seminar on Legal Consequences of Declaring a Legal Act Unconstitutional for the Protection of Human Rights in Administrative Proceedings.

*“It is necessary to introduce an effective national mechanism of legal protection of human rights in the frame of implementation of the institution of individual constitutional complaint”*

*Serhiy Holovaty,  
judge of the Constitutional Court of Ukraine*



Judge of the Constitutional Court of Ukraine S. Holovaty during the round table on the occasion of the anniversary of the adoption of the Code of Administrative Proceedings of Ukraine (Kyiv, July 6, 2020)

- Summer School “The Rule of Law and Constitutionalism: the Constitutional Order and its Anti-Crisis Set of Tools” for students and post-graduate students of higher educational establishments aimed at improving the knowledge of lawyers in the sphere of constitutional law and the protection of human rights and fundamental freedoms.



Following the tradition, the judge of the Constitutional Court of Ukraine, Doctor of Legal Sciences, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine Vasyl Lemak delivered his presentation (“How to Protect the Constitution of Ukraine against Current Politics?” (the Secrets of “Creative Kitchen” of the Constitutional Jurisprudence”).

Participants of the summer school "Rule of Law and constitutionalism: the Constitutional Order and its Anti-Crisis Set of Tools" (*Svalyava (Poliana village), August 2-9, 2020*)

*“The constitutional order, in particular such its principles as the rule of law and democracy create that very space in which individual human rights are implemented and protected. The real and true nature of human rights depend on its effectiveness”.*

**Vasyl Lemak,**  
judge of the Constitutional Court of Ukraine

- Onlinediscussion “Human Dignity and Gender Equality: Constitutional Metamorphoses” held in the frame of the IV Kharkiv International Legal Forum. It was attended by the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi and Judge of the Constitutional Court of Ukraine Halyna Yurovska. The participants discussed how the concept of dignity and gender equality shape the modern constitutional landscape, what public and legal tools can be for the formation of gender sensitivity and the creation of a wide range of conditions associated with human prosperity. The issue of institutional capacity of domestic and international human rights protection mechanisms were also discussed.



*"The Constitutional Court of Ukraine believes that the equality of all people in their rights and freedoms guaranteed by the Constitution of Ukraine means the need to provide them with equal legal opportunities."*

***Halyna Yurovska,**  
judge of the Constitutional Court of Ukraine*

From left to right: Judge of the Constitutional Court of Ukraine H. Yurovska, Chairman of the Constitutional Court of Ukraine O. Tupytskyi during the public online discussion "Human Dignity and Gender Equality: Constitutional Metamorphoses" (Kyiv, September 25, 2020)

- Round table "Presentation of the Report upon the Results of the Study 'Attitude of Ukrainian Citizens to the Judicial System'" and the Opinion No. 23 on the role of the associations of judges in supporting the judicial independence during which attention was focused on the implementation of the Council of Europe standards in the sphere of justice.

*"European values and values formulated by the Consultative Council of European Judges are a powerful tool in the sphere of independence and inviolability of Ukrainian judges and lawyers."*

***Viktor Horodovenko,**  
judge of the Constitutional Court of Ukraine*

- Lectures and discussions in the form of webinars, organised within the project "Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine" (Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine). The event was supported by the Ministry of Foreign Affairs of the Republic of Latvia.
- Professional discussion of the Annual Report of the High Council of Justice "On the State of Ensuring the Independence of Judges in Ukraine in 2019".
- IV Congress of the Association of Asian Constitutional Courts and Equivalent Institutions "Constitution XXI - Rule of Law, Human Value and State Efficiency", organised by the Constitutional Council of the Republic of

Kazakhstan in the framework of the 25th anniversary of the Constitution of the Republic of Kazakhstan.

- VIII Summer School on "Restrictions of Human Rights and Freedoms in Health Emergencies: the Case of COVID-19", organised by the Constitutional Court of the Republic of Turkey.
- International scientific-practical conference "Anti-Corruption Crisis in Ukraine: Causes, Consequences and Lessons: IV Kyiv Polylogue".

*"Despite the fact that some issues considered by the Constitutional Court of Ukraine are quite ambiguously perceived by the society, the Court must have its say if the rules of law violate the principles and norms of the Basic Law of the country. It is its constitutional duty."*

*Vasyl Lemak,  
judge of the Constitutional Court of Ukraine*

Within the framework of the existing agreements between the Constitutional Court of Ukraine and scientific and educational institutions of Ukraine, agreements on cooperation in research, teaching, information and other spheres of activity were extended, which allows to effectively perform the functions of each of the parties, defined by the Constitution of Ukraine and the laws of Ukraine.

In accordance with their powers and within the available resources, the parties cooperate in the following priority areas: providing expert and advisory assistance that the parties may need to properly perform the functions assigned to them by the Constitution of Ukraine and the laws of Ukraine; conducting joint scientific, scientific-practical and other events; development of proposals and recommendations on draft laws and other regulations, if necessary; promoting the development of the science of constitutional law, popularisation of scientific knowledge in this field, as well as other areas.

The cooperation agreement does not limit the cooperation of the parties in other possible areas of activity.

### **3.3. FESTIVE AND MEMORABLE EVENTS**

Despite the pandemic, traditionally, the Constitutional Court of Ukraine held a number of events which were celebrated with some specificities:

1. **The Vyshyvanka (National Embroidery) Day:** judges and staff of the Secretariat of the Constitutional Court, in support of values of the Ukrainian people wore vyshyvanka – unique piece of art which served as a protective talisman for our people.

2. **Children's Day:** a photo exhibition of children's art was organised in the premises of the Constitutional Court reminding that children are a particular social group which has its rights, interests, specific problems, yet not able to stand up and protect its rights.

*“We are aware that children are the future of any state. Therefore we are obliged to take up responsibility for unconditional observance of their constitutional rights so that they grow up to be happy citizens of Ukraine.”*

**3. The Day of Honouring the Memory** of judges of the Constitutional Court of Ukraine who had passed away was marked by laying the flowers to the places of their burial at the Baikove cemetery in Kyiv together with the relatives of the deceased judges.

*If we do not remember the past we will not be able to move forward.*

In execution of the Decree of the President of Ukraine of August 23, 2004 No.987/2004 “On the Day of the State Flag of Ukraine” as well as to honour centuries-old history of the Ukrainian state-building, state symbols of the independent Ukraine, the **ceremony of raising the State Flag of Ukraine** was held at the Constitutional Court of Ukraine on the occasion:

- the Day of National Unity of Ukraine;
- the Day of Memory and Reconciliation and the 75<sup>th</sup> anniversary of the Victory in the Second World War;
- the Day of Constitution of Ukraine;
- the Day of the State Flag of Ukraine;
- the Day of Independence of Ukraine;
- the Day of the Defender of Ukraine;
- the Day of Armed Forces of Ukraine.



Also, the Constitutional Court does not forget about the tragic days of the Ukrainian history. Throughout the year the leadership of the Constitutional Court participates in the national memorial events, book exhibitions etc. Among them are the Day of Heroes of the Celestial Hundred, the Day of Chornobyl catastrophe, the Day of Memory and Reconciliation, the Day of Remembering of the Victims of Political Repressions, the Day of Mourn and Remembering the Victims of War in Ukraine, the Day of Remembering the Victims of Holodomors.

### **3.4. THE CONSTITUTIONAL COURT OF UKRAINE AND CIVIL SOCIETY**

In the reporting period, the activities of the Constitutional Court was based on the constitutional principles of its work, i.e. openness and transparency. The Court aims at providing the public with as much information on tis activities as possible. In

2020 the Court paid great attention to modern and accessible communication with the civil society, in particular by was of timely and quick provision of information on its activities.

In providing transparency and openness, the Court drafted and posted on its official website about 600 information notes on judicial and extrajudicial activities. The body of constitutional jurisdiction of Ukraine also communicated through its official pages in Facebook and Twitter. Moreover, a YouTube channel of the Constitutional Court of Ukraine was created which helps broadcast the public parts of plenary sessions of the Constitutional Court of Ukraine, other official events.

The Constitutional Court of Ukraine is open for everyone, who wants to know more about its activities. The latest data testifies to the increase in a number of those willing to visit the Court, and to get to know how the body of constitutional jurisdiction which ensures the supremacy of the Constitution of Ukraine works.



Students of the specialised school of the first degree - gymnasium No. 143 in the press center of the Constitutional Court of Ukraine (*Kyiv, January 2020*)



Students of Lyceum "Holosiivskyi" No. 241 of Kyiv in the session hall of the Second Senate of the Constitutional Court of Ukraine (*Kyiv, January 2020*)



Students of the Kyiv Institute of Intellectual Property and Law of the National University "Odesa Law Academy" in the session hall of the Grand Chamber of the Constitutional Court of Ukraine  
*(Kyiv, February 2020)*

In view of the Covid-19 pandemic and quarantine measures court tours were suspended, therefore their number if compared to the previous years significantly decreased.

At the same time raising legal awareness and legal culture of citizens, and their knowledge on the activities of the body of constitutional jurisdiction in Ukraine remains an important and inalienable part of its work. Given this, there was launched creation of virtual 3-D court tour at the official website of the Constitutional Court of Ukraine. One will be able to see courtrooms of the Grand Chamber of the Constitutional Court of Ukraine, the library complex, visit the exhibition of the history of the Constitutional Court of Ukraine and gifts received.

### **3.5. INTERNATIONAL COOPERATION**

In 2020 the international cooperation of constitutional jurisdiction bodies, including the Constitutional Court of Ukraine, was essentially affected by the COVID-19 pandemic and the related quarantine measures which led to cancellation of a great number of events at the international level or their postponement until 2021.

At the same time, given the necessity to quickly react to the situation and strong desire of all participants of the international community to continue to support and develop international cooperation, a number of new methods and forms of work were quickly elaborated, which, in this turn, facilitated the new agenda and allowed to preserve proper level of dialogue with local and international partners. This was greatly facilitated by application of the news information and communication technologies.

In 2020 cooperation with the Council of Europe was substantially strengthened. The visit of the delegation of the Constitutional Court of Ukraine led by the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi, and composed of the Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty, judges of

the Court Viktor Gorodovenko and Iryna Zavhorodnia to Strasbourg in January to participate in the events on the occasion of the official opening of the ECHR's judicial year contributed much to the strengthening of institutional cooperation with the Council of Europe and its working bodies, notably with the Department for the Execution of Judgments of the European Court of Human Rights of the Directorate General on Human Rights and Rule of Law.

During its stay at the Council of Europe working meetings were held with the President of the European Commission for Democracy through Law (Venice Commission) Gianni Buquicchio, the Secretary of the Commission Thomas Markert, the Council of Europe Director General for Human Rights and Rule of Law Christos Giakoumopoulos, Director of Human Rights Christophe Poirel, Head (a.i.) of the Department for the Execution of Judgments of the ECHR, Directorate General of Human Rights and Rule of Law, Fredrik Sundberg, Head of the Division of the Department for the Execution of Judgments of the ECHR, Pavlo Pushkar.



From left to right: judges of the Constitutional Court of Ukraine O. Tupytskyi, I. Zavhorodnia, President of the European Commission "For Democracy through Law" G. Buquicchio, judges of the Constitutional Court of Ukraine S. Holovaty, V. Horodovenko during working visit of the delegation of the Constitutional Court of Ukraine to the Council of Europe (*Strasbourg, French Republic, January 30-31, 2020*)



Working visit of the delegation of the Constitutional Court of Ukraine to the Council of Europe  
(Strasbourg, French Republic, January 30-31, 2020)

During the year a number of virtual meetings were held and a complex of joint event to be implemented in 2021 was elaborated.

The delegation of the Constitutional Court of Ukraine headed by the Court's Chairman Oleksandr Tupytskyi, and composed of the Judge Viktor Kryvenko and the Head of the Court's Secretariat Viktor Beschastnyi paid a working visit to the Republic of Moldova on 19-20 February 2020.



Participants of the International Conference on "Constitutional Justice and the Society's Reaction: When the Solutions of the Constitutional Courts are in Disagreement with the Majority Opinion of the Society" (Chisinau, Republic of Moldova, 19-20 February 2020)

The aim of the visit was to participate in the International Conference on “Constitutional Justice and the Society’s Reaction: When the Solutions of the Constitutional Courts are in Disagreement with the Majority Opinion of the Society”, organised on the occasion of the 25<sup>th</sup> anniversary of the Constitutional Court of the Republic of Moldova. The participants exchanged opinions on a wide range of issues related to the activities of bodies of constitutional jurisdiction and the possibility to deepen the existing forms of cooperation.

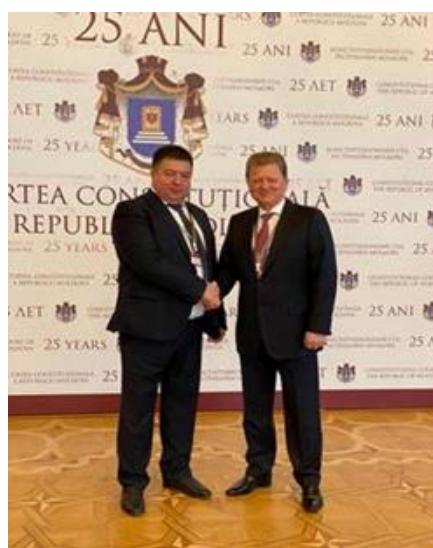
During the conference the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi delivered a presentation.

Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi delivered a presentation on the topic of the conference.

During the visit, Oleksandr Tupytskyi also had a meeting with the Chairman of the Constitutional Court of the Republic of Moldova Vladimir Țurcan. The parties discussed a number of crucial issues, in particular as to interaction of bodies of constitutional jurisdiction with the Venice Commission, resolution of systemic problems related to the execution of judgments of the European Court of Human Rights as well as the ways to improve the mechanism of the protection of human rights at the domestic level. The parties also expressed support to each other and agreed to further develop good neighbour partnership.

In the frame of the working visit, the delegation of the Constitutional Court of Ukraine held a meeting with the Ambassador Extraordinary and Plenipotentiary of Ukraine to the Republic of Moldova Marko Shevchenko, during which they discussed the state and prospects of the Ukrainian-Moldovan relations.

Furthermore, the Court’s representatives held a number of fruitful working meetings with the presidents of foreign constitutional courts.



From left to right: Chairman of the Constitutional Court of Ukraine O. Tupytskyi, Chairman of the Constitutional Court of the Republic of Moldova V. Țurcan (*Chisinau, Republic of Moldova, 19-20 February 2020*)



From left to right: Head of the Secretariat of the Constitutional Court of Ukraine V. Beschastnyi, judge of the Constitutional Court of Ukraine V. Kryvenko, Ambassador Extraordinary and Plenipotentiary of Ukraine to the Republic of Moldova M. Shevchenko, Chairman of the Constitutional Court of Ukraine O. Tupytskyi (*Chisinau, Republic of Moldova, 19-20 February 2020*)

In the framework of cooperation with the OSCE Project Co-ordinator in Ukraine, two joint projects were implemented: "Support to the Reform of Constitutional Justice" (annual) and "Support to the Protection of Human Rights by Improving Access to Constitutional Justice" (three-year).

Within the three-year project, with the financial support of the Government of the Federal Republic of Germany, the OSCE Project Co-ordinator in Ukraine transmitted to the Constitutional Court of Ukraine equipment to establish the Training Centre on Constitutional Law which was inaugurated on June 24, 2020.

In the light of measures related to quarantine, the establishment of the training centre became an extremely timely step. The equipment received by the Court allowed to organise various events at the national and international levels applying the newest information and communications technologies throughout the year.

Thanks to the above mentioned project, translation and publication of the 2019 Annual Information Report of the Constitutional Court of Ukraine in Ukrainian and English were performed at the qualitatively new level.

Creation of an online library of constitutional law was initiated, a test version has been implemented, a number of translations of the jurisprudence of foreign constitutional courts on social and gender issues were made.

During the year, the institute of special advisors was in operation.

Regular practice is the meetings of the Court's leadership with heads of diplomatic representations accredited in Ukraine, representatives of foreign bodies of constitutional jurisdiction and international organisations. Overall, 11 international meetings were held during the year, which were aimed at ensuring and developmnet of international cooperation of the Court.

On January 22, a meeting was held with the Special Envoy of the Government of Germany on Decentralisation, Good Governance and Reforms in Ukraine George Milbradt.

The Constitutional Court of Ukraine was represented by the Chairman of the Court Oleksandr Tupytskyi, as well as by the judges of the Court Serhiy Holovaty, Iryna Zavhorodnia, Viktor Kolisnyk, Oleh Pervomaiskyi and Petro Filiuk. The meeting was also attended by the Political Department officer of the Embassy of the Federal Republic of Germany in Ukraine Raphael Raum and Advisor to the Director of the U-LEAD Program with Europe Liliia Maliarchuk.



Judges of the Constitutional Court of Ukraine P. Filiuk, V. Kolisnyk, O. Tupytskyi, S. Holovaty, O. Pervomayskyi during a meeting with the Special Envoy of the Government of Germany on Decentralisation, Good Governance and Reforms in Ukraine George Milbradt  
*(Kyiv, January 22, 2020)*

On February 13, 2020 the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi held a meeting with the Ambassador Extraordinary and Plenipotentiary of the Republic of Moldova to Ukraine Ruslan Bolbocean.



From left to right: Chairman of the Constitutional Court of Ukraine O. Tupytskyi, Ambassador Extraordinary and Plenipotentiary of the Republic of Moldova to Ukraine R. Bolbocean, Head of the Secretariat of the Constitutional Court of Ukraine V. Beschastnyi (Kyiv, February 13, 2020)

On February 26, Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi held a meeting with Ambassador Extraordinary and Plenipotentiary of Japan to Ukraine Takashi Kurai.



Judges of the Constitutional Court of Ukraine P. Filiuk, V. Kryvenko, O. Tupytskyi, S. Holovaty with Ambassador Extraordinary and Plenipotentiary of Japan to Ukraine Takashi Kurai (Kyiv, February 26, 2020)



Head of the Secretariat of the Constitutional Court of Ukraine V. Beschastnyi, Chairman of the Constitutional Court of Ukraine O. Tupytskyi during a meeting with the Head of the UN Monitoring Mission for Human Rights in Ukraine M. Bogner (*Kyiv, October 23, 2020*)

On October 27, the Constitutional Court was attended by the Ambassador Extraordinary and Plenipotentiary of Japan to Ukraine Takashi Kurai, Ambassador of the European Union, Head of the EU Delegation to Ukraine Matti Maasikas and the Chargé d'Affaires of the United States in Ukraine Kristina A. Kvien where they met with the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi.



From left to right: the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi, the Ambassador Extraordinary and Plenipotentiary of Japan to Ukraine Takashi Kurai (*Kyiv, October 27, 2020*)



From left to right: the Chargé d'Affaires of the United States in Ukraine Kristina A. Kvien, the Chairman of the Constitutional Court of Ukraine Oleksandr Tupytskyi, Ambassador of the European Union, Head of the EU Delegation to Ukraine Matti Maasikas (Kyiv, October 27, 2020)

A number of Court's Secretariat employees who participate in international trainings is growing. During the reporting year, thanks to new technical possibilities a number of online events to strengthen the capacity of the Court's staff were held in the frame of joint projects with the OSCE Project Co-ordinator in Ukraine, the Constitutional Court of the Republic of Latvia ("Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine"). The Court representatives also participated in the Summer School organised by the Constitutional Court of the Republic of Turkey.



From left to right: O. Shmyhova, Chief Consultant of the Comparative Research Division of the Comparative Legal Analysis Department of the Legal Directorate, O. Spinchevska, Deputy Head of the Preliminary Opinions Division of the Constitutional Petitions and Constitutional Appeals Processing Department of the Legal Directorate during the Summer school organised by the Constitutional Court of the Republic of Turkey (Kyiv, September 7-8, 2020)

Last year the English version of the official website of the Constitutional Court of Ukraine was substantially improved. From now on all sections of the website are available in English, translation of the news, announcements is done daily in order to inform the foreign bodies of constitutional jurisdiction, expert and media circles on the procedural and extrajudicial activities of the Court. As compared to previous years, a number of communications has significantly increased.

It is worth mentioning that in 2020 the Constitutional Court's jurisprudence has been positively assessed at the international level on more than one occasion.

On 12 March President of the Venice Commission Gianni Buquicchio made a statement in which he welcomed the Constitutional Court's decision No.4-r/2020 dated March 11, 2020 in the case on the conformity of the separate provisions of the Laws of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 No. 1402 – VIII, "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and of Some Laws of Ukraine on the Activity of Judicial Governance Bodies" of October 16, 2019 No. 193 – IX, "On the High Council of Justice" of December 21, 2016 No. 1798 – VIII. In his opinion, it strengthens the independence not only of the Supreme Court but of the Ukrainian judiciary in general.

On 17 March the Directorate General on Human Rights and Rule of Law of the Council of Europe gave a positive assessment of this decision. The Committee of Ministers of the Council of Europe in its latest decisions of 3-5 March 2020 assessed the amendments introduced by the provisions of the Law No.193-IX and their influence on the independence of the judiciary.

Professor Diana Kovatcheva, the Council of Europe's international consultant, in the framework of the project "Support to the implementation of the judicial reform in Ukraine" provided "Opinion on the decisions of the Constitutional Court of Ukraine No. 2-r/2020 and No. 4-r/2020".

Decision of the Constitutional Court of Ukraine No. 7-r/2020 dated June 11, 2020 in the case on the conformity of Article 375 of the Criminal Code with the Constitution of Ukraine (constitutionality) was positively assessed by the UN Human Rights Monitoring Mission in Ukraine and by the Department of Execution of Judgments of the European Court of Human Rights of the Directorate General on Human Rights and Rule of Law of the Council of Europe.

### **3.6. PUBLICATIONS AND INTERVIEWS**

During 2020 a number of monographs, professional articles and other research works of judges of the Constitutional Court were prepared and published. The Chairman and the judges of the Constitutional Court gave 11 interviews and over 50 comments on the activities of the Constitutional Court of Ukraine to mass media.

## **IV. SUPPORT OF THE WORK OF THE CONSTITUTIONAL COURT OF UKRAINE**

### **4.1. The Secretariat of the Constitutional Court of Ukraine**

The Secretariat of the Constitutional Court provides reliable and effective work aimed at creating the necessary conditions for the operations of the Constitutional Court of Ukraine.

#### **POWERS**

The Secretariat of the Constitutional Court exercises the powers set forth by the Law of Ukraine "On the Constitutional Court of Ukraine". The powers of the Secretariat include organisational, analytical, legal, informational and logistical support of the work of the Constitutional Court, in particular:

##### *Organisational support:*

preparation and holding of hearings of boards of judges of the Constitutional Court, senates of the Constitutional Court of Ukraine, and the Grand Chamber of the Constitutional Court of Ukraine, providing documentation, organisational, technical, and information support to constitutional proceedings;

processing, drawing-up and distribution of acts of the Constitutional Court of Ukraine;

implementation of the legal requirements for managing and performing civil service in the Constitutional Court of Ukraine;

organisation and implementation within its competences of information protection measures, control over observance of the information protection rules, as well as mobilisation training;

support of document flow in the Constitutional Court and record keeping in accordance with the requirements of the legislation;

holding public events in the Constitutional Court;

exercise of official communications with the subjects of appeal to the Constitutional Court, participants in the constitutional proceedings and persons involved in the constitutional proceedings;

##### *Analytical support:*

preliminary examination of all forms of appeals filed at the Constitutional Court, preparation of preliminary opinions on the existence of grounds for initiating or refusal to initiate constitutional proceedings in a case;

preparation of analytical, information and reference materials on appeals to the Constitutional Court in the manner prescribed by law, as well as information and analytical materials on European and global practices of constitutional jurisdiction;

maintaining and timely updating of the catalogue of legal positions of the Constitutional Court of Ukraine;

monitoring the state of implementation of the acts of the Constitutional Court of Ukraine and control, upon the commission of the Constitutional Court of Ukraine, of the implementation of decisions and observance of the opinions of the

Constitutional Court of Ukraine, which determine the procedure for their implementation or provide appropriate recommendations;

performing analysis of inquiries and appeals of individuals and legal entities, public authorities, local governments and other subjects of appeal to the Constitutional Court of Ukraine; regular provision of relevant information to the Chairman of the Constitutional Court of Ukraine and the leadership of the Secretariat of the Constitutional Court of Ukraine;

*Legal support:*

representation of the Constitutional Court of Ukraine as a legal entity in relations with legal entities and individuals within the limits set out by law;

participation in development of draft legal acts relating to the activities of the Constitutional Court of Ukraine;

providing legal support to the internal work of the Constitutional Court of Ukraine, its Secretariat and ensuring the representation of the Constitutional Court of Ukraine in courts on matters arising in connection with its work;

*Information support:*

ensuring the functioning of the official website of the Constitutional Court of Ukraine;

coverage of the activities of the Constitutional Court of Ukraine on the official website of the Court and in the mass media;

ensuring the official promulgation of the acts of the Constitutional Court of Ukraine and preparation of the “Bulletin of the Constitutional Court of Ukraine” for publication;

preparation of a draft annual information report of the Constitutional Court of Ukraine in the manner prescribed by law;

ensuring access to public information administered by the Constitutional Court of Ukraine;

organisation of activities on introduction of computer information technologies and modern office equipment into the work of the Constitutional Court of Ukraine and the Secretariat on the principles of science-based organisation of work;

*Logistical support:*

resolving within its competence the issue of financial support for the work of the Constitutional Court of Ukraine and effective use of public funds for the Court's maintenance and implementation of its activities;

preparation of the draft budget request and the draft budget estimates of the Constitutional Court of Ukraine in the manner prescribed by law;

implementation of measures for the effective use of property managed by the Constitutional Court of Ukraine, public procurement of goods, works and services and implementation of relevant contracts;

development of proposals on strategic and priority objectives of epy institutional development of the Constitutional Court of Ukraine, long and short-term

plans of financial, information, technical and housekeeping support of the Constitutional Court of Ukraine and its Secretariat;  
implementation of occupational safety measures in the prescribed manner.

## **THE COMPOSITION OF THE SECRETARIAT OF THE CONSTITUTIONAL COURT OF UKRAINE**

*The Secretariat of the Constitutional Court of Ukraine consists of:*

Organisational Work Directorate;  
Legal Directorate;  
Administrative and Financial Directorate;  
Department of Communications of the Constitutional Court of Ukraine and International Cooperation;  
Document Management Department;  
Personnel Management Department;  
Division of Preliminary Examination of Constitutional Complaints;  
Accounting Service of the Constitutional Court of Ukraine;  
Archive of the Constitutional Court of Ukraine;  
Library of the Constitutional Court of Ukraine;  
Information Security Unit.

## **THE NUMBER OF STAFF OF THE COURT'S SECRETARIAT**

As of December 31, 2020, the overall staff number of the Constitutional Court of Ukraine was 396, including 18 judges, 54 employees of patronage offices, 213 civil servants, 12 employees of support services, 99 employees of Court's motor depot.

The actual staff number of Constitutional Court of Ukraine as of December 31, 2020 was 355, including 15 judges, 44 employees of patronage offices, 191 civil servants, 10 employees of support services, 95 employees of Court's motor depot.

Out of the general number of the Court's Secretariat:

17 civil servants and 15 employees of patronage offices have a "Candidate of Sciences" scientific degree,  
2 civil servants and 1 employee of patronage offices have a "Doctor of Legal Sciences" scientific degree,  
31 civil servants and 8 employee of patronage offices have state awards and honorary titles,  
3 civil servants have basic higher education,  
188 civil servants and 44 employee of patronage offices have higher education (including 71 and 17 masters respectively),  
96 civil servants and 43 employee of patronage offices have higher legal education,  
32 civil servants and 4 employee of patronage offices graduated from National Academy of Public Administration under the President of Ukraine,  
39 civil servants are under 35,  
145 civil servants are between 36 and 60,  
7 civil servants are over 60.

## **THE WORK OF THE SECRETARIAT OF THE CONSTITUTIONAL COURT OF UKRAINE IN 2020**

During 2020, the Secretariat of the Constitutional Court implemented a number of important measures aimed at improving the processes that provide systemic support to the work of the Constitutional Court of Ukraine.

Priority efforts were made to create better organisational conditions for the consideration of constitutional petitions, appeals and complaints. Particular attention was paid to improving the work with constitutional complaints at all stages of their processing - from the process of registration of a constitutional complaint, its preliminary examination, determination of a judge-rapporteur, to the stages of its consideration by the competent bodies of the Constitutional Court of Ukraine, adoption and publication of the relevant decision.

In 2020, consistent work towards expanding the scope of application of modern information and communication technologies has been done to include: improvement online broadcasts of public hearings of the senates and the Grand Chamber of the Constitutional Court and access to the video archive of hearings; measures were taken to further deploy and adapt a comprehensive system of electronic document management reflecting the organisational and technological features of the work of the Constitutional Court of Ukraine and the Secretariat; a system of generation and distribution of court cases with the determination of a judge-rapporteur using the electronic document management system was implemented.

### **4.2. THE ARCHIVE OF THE CONSTITUTIONAL COURT OF UKRAINE**

The archive of the Constitutional Court was created in accordance with the requirements of the Law of Ukraine "On the Constitutional Court of Ukraine" to store the materials generated in the course of the work of the Constitutional Court of Ukraine and its Secretariat, use the information contained in these documents for official, research and other purposes, and also to protect the rights and legitimate interests of citizens.

In 2020 the work of the Archive of the Constitutional Court of Ukraine was aimed at implementing the tasks related to the organisation of work on archiving the materials on the activities of the Court and the Secretariat, their audit, establishment of the information and reference basis for the archive documents, their storage and use (1887 original acts of the Court were received, 1358 cases in which the Court adopted a decision, ruling or opinion were received, their materials were archived in 3720 volumes).

6547 copies of the use fund of the acts of the Constitutional Court of Ukraine were created.

339 volumes of cases with protocols of hearings and plenary hearings of the Court, the Senates, the boards of judges, protocols of hearings of the standing

commissions of the Constitutional Court of Ukraine and the materials of the Assembly of judges of the Constitutional Court of Ukraine were systematised and archived.

672 items were received for archiving from the structural units of the Court's Secretariat, including: 257 volumes of cases for permanent and long-lasting (over 10 years) storage, 385 items of photo- and video materials and printed production, 1358 archive court cases were created in the electronic format.

46 items of information and reference and audit nature were created (description of cases of permanent storage, personnel matters, case files materials, original acts of the Court, nomenclature, audit journals and books etc.).

For the period of the functioning of the Archive, 14 569 items of archive storage have been transmitted to the Archives.

The premises of the Archives of the Constitutional Court are equipped with metal mobile movable racks for proper storage of court materials and other documents of the Constitutional Court and its Secretariat which allow to effectively use the available space.

Equipping the Court's Archives with metal mobile racks and introducing in 2020 of the new system of firefighting security allow to observe the norms regulating the protection of the archive documentation.



#### **4.3. THE LIBRARY OF THE CONSTITUTIONAL COURT OF UKRAINE**

The library of the Constitutional Court was established in accordance with the Law of Ukraine "On the Constitutional Court of Ukraine" to provide the Constitutional Court of Ukraine with research and other special literature. The Library acts as an independent structural unit of the Court's Secretariat, is a specialised library which provides formation, storage of the library funds and provides for use books, brochures, textbooks, handbooks, educational and methodological publications, monographs, periodicals, encyclopedia, dictionaries, reference literature, normative legal acts, research materials in various fields of law, dissertations' abstracts, conference materials of the conferences, seminars, round tables, newspapers and

magazines, documents of foreign constitutional courts, other documentary and information recourses, including on constitutional jurisprudence.

The Library of the Constitutional Court of Ukraine contains the most demanded legal literature, encyclopedia, reference books, dictionaries of scientific, educational and applied nature.



The Court's most popular and significant editions are encyclopedia. Among universal multidisciplinary encyclopedic publications in the Court's Library are "The Encyclopedia of Modern Ukraine" in 20 VOLUMES, "The Encyclopedia of the History of Ukraine", "The Great Ukrainian Legal Encyclopedia" in 20 volumes, "The Legal Encyclopedia" in 6 volumes, "The Encyclopedia of Public Administration" in 8 volumes etc.

Special place in the Court's Library belongs to the linguistic dictionaries. Among a great number of various types the basic are "Concise Definition Dictionary of the Ukrainian Language", "The Dictionary of Abbreviations in the Ukrainian Language", "The Dictionary of Foreign Vocabulary".



The Court's Library has a unique collection of legal literature of the early 19<sup>th</sup> century, which represents historical and cultural value which was granted by the National Historical Library of Ukraine and is represented at the permanent exhibition "From the Treasury of the Legal Thought".

Books received from foreign constitutional courts, including "The American Law Collection" in 50 volumes, jurisprudence on constitutional courts of the European countries also occupy a worthy place on the bookshelves of the Constitutional Court's Library.

Annually the Library funds are replenished with the latest legal literature, first and foremost literature on constitutional jurisdiction and other fields of law. As of the end of 2020 the fund comprises over 19 000 volumes.

The search system of the Library of the Constitutional Court consists of a system of library catalogues: alphabetical, systematic catalogues and IRBIS electronic library catalogue, which contains 236 856 bibliographic entries. During the year more than 2,500 documents were issued in order to meet the readers' information needs.

#### **4.4. THE OFFICIAL PUBLICATION OF THE CONSTITUTIONAL COURT OF UKRAINE**

The Bulletin of the Constitutional Court of Ukraine is the official publication of the Constitutional Court according to the Law of Ukraine "On the Constitutional Court of Ukraine".

The journal, which has been published since 1997, covers current issues of constitutional justice and constitutional law of Ukraine and other states.

In 2020, there were published 6 issues of the Bulletin (two of them - combined), which contained mostly the acts of the Constitutional Court of Ukraine, since according to Article 47 of the Law of Ukraine "On the Constitutional Court of

Ukraine” “The Bulletin of the Constitutional Court of Ukraine” is the official publication of the Court”. Decision and opinions of the Court as well as dissenting opinions of the Judges of the Constitutional Court of Ukraine were regularly published in the edition.

Regular column “The Theory and Practice of Constitutional Jurisdiction” covered the crucial issues of constitutional justice and constitutional law of Ukraine and other states. Among the authors of the column were judges of the Constitutional Court of Ukraine, former judges of the Constitutional Court of Ukraine, Ukrainian and foreign lawyers and legal experts.

During the year there were published reviews of the conferences organised by the Constitutional Court of Ukraine (in particular, the review of the International online conference “Mutual Achievements of the European Commission “For Democracy through Law” and Bodies of Constitutional Justice and the Problems of Interpretation in the Constitutional Jurisprudence” published in No.5/2020 of the Bulletin).

Nos. 3/2020 and 6/2020 contain reference reviews of the sources on constitutional and legal subject matters published in 2020.

Furthermore, in 2020 there was published the collection of acts of the Constitutional Court of Ukraine – Volume 17 “The Constitutional Court of Ukraine. Decisions. Opinions. 2019”, which includes 9 opinions in the cases on the conformity of draft laws on introducing amendments to the Constitution of Ukraine to the requirements of Articles 157 and 158 of the Constitution, 9 decisions in the cases upon the constitutional petitions of People’s Deputies of Ukraine, Ukrainian Parliamentary Commissioner on Human Rights on the constitutionality of laws of Ukraine, the decree of the President of Ukraine, the resolution of the Cabinet of Ministers of Ukraine, 1 decision in the case upon the constitutional petition of People’s Deputies of Ukraine on the official interpretation of the provisions of the Constitution of Ukraine, 9 decisions in the cases upon the constitutional complaints on the constitutionality of the provisions of the laws of Ukraine.

The results of the Constitutional Court’s publishing activities in 2020 also include the collection of materials of the international online conference “Mutual Achievements of the European Commission “For Democracy through Law” and Bodies of Constitutional Justice and the Problems of Interpretation in the Constitutional Jurisprudence” and the Research and practical online conference “The Doctrinal Approaches in the Activities of the Constitutional Court of Ukraine” published with the support of the OSCE Project Co-ordinator in Ukraine.



*The Bulletin of the Constitutional Court of Ukraine  
(established on February 19, 1997)*

#### **4.5. RESEARCH AND ADVISORY COUNCIL OF THE CONSTITUTIONAL COURT OF UKRAINE**

The Research and Advisory Council of the Constitutional Court (hereinafter referred to as the Council) was established from among highly qualified specialists in the field of law to prepare research opinions on the work of the Constitutional Court of Ukraine that require scientific support. Its membership was approved by the Court Resolutions No. 12-п / 2019 of April 9, 2019, No. 23-п / 2019 of June 6, 2019, and No. 37-п / 2019 of November 5, 2019).

The Council's composition includes prominent domestic researchers, whose scientific interests cover various fields of law, statehood and philosophy. The members of the Council include: 11 full members of the National Academy of Legal Sciences of Ukraine, 8 corresponding members of the National Academy of Legal Sciences of Ukraine, 56 Doctors of Law, one Doctor of Philosophy, one Doctor of Economics, and 17 Associate Doctors of Legal Sciences.

There were appointed the Chairman, Deputy Chairman and the Academic Secretary of the Council:

Chairman – *Yuriii Barabash*, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Doctor of Law, Professor, Vice-Rector for Academic Affairs of the Yaroslav the Wise National Law University;

Deputy Chairman – *Serhii Riznyk*, Associate Doctor of Law, Associate Professor, Associate Professor of the Chair of Constitutional Law, Deputy Dean of the Law Department of Ivan Franko National University of Lviv;

Academic Secretary – *Serhii Vavzhenchuk*, Doctor of Law, Associate Professor, Professor of the Chair of Labour and Social Security Law of the Law Department of Taras Shevchenko National University of Kyiv.

In the frame of cooperation of the Council and the Court, in June 2020 the Council members took part in the International online conference “Mutual Achievements of the European Commission “For Democracy through Law” and Bodies of Constitutional Justice and the Problems of Interpretation in the Constitutional Jurisprudence” which was organised by the Constitutional Court of Ukraine in cooperation with the Venice Commission and the OSCE Project Coordinator in Ukraine.

For the period of activity of the Council there have been elaborated the ways of successful and effective cooperation. Various opinions on the forms and frames of the work of the Council’s members on the issues requiring research and are of interest for the Constitutional Court of Ukraine are considered.

In October 2020 the 2<sup>nd</sup> session of the Research and Advisory Council of the Constitutional Court of Ukraine was held. The participants discussed the ways to improve interaction with the Constitutional Court of Ukraine; whether the opinion of the Council’s member should be individual and contain only his/her scientific position or whether it should include the position of the academic institution in which this member holds office. The Council’s members expressed their opinion on possible involvement of other scholars to drafting opinions. Upon the results of such activities scholars may be also included in the Council’s membership. Possibilities to reward the Council’s members was also discussed.

To develop the scientific discussion on the crucial issues in the activities of the Constitutional Court of Ukraine a scientific and practical online conference “The Doctrinal Approaches in the Activities of the Constitutional Court of Ukraine” was held. In order to cover a greater number of issues for discussion and to develop further frames of work, the conference consisted of three thematic sections held simultaneously. The sections were devoted to („The Doctrine of Separation of Power: Modern Contexts“, „the Principles of Social State and the Protection of Human Dignity: Interpenetration and the System of Guarantees“, „The Rule of Law as an Instrument of Constitutional Protection of Human Rights“). The conference materials were published on the official website of the Constitutional Court of Ukraine and in hard copy.

A series of online events involving the Council members and the Court judges proved the necessity to further conduct online discussions on crucial matters pending the Court and provide an opportunity for the scholars to present their position and raise the authority of the Court decisions through active discussion of the topical issues and the problems with the domestic legal community.

For the period of the Council’s activities a system of criteria was crystallised according to which judges-rapporteurs select the Council members to request an opinion or apply to the Council members indirectly through the Council’s Chairman, Deputy Chairman or Academic Secretary, the latter involving several scholars or establishing a temporary group to examine specific issues. Hence, such close

cooperation and combining of practical issues raised before the Constitutional Court judges and the scholars and researches influences the development of the constitutional doctrine.

It is suggested to establish sections, working groups to examine and discuss specific issues of the Court jurisprudence and the structure of the Court acts, with such hearings held online which will allow to save time and provide better access to the record. It is also suggested to involve experts in various fields of law who are not the Council members to enrich the experience and views of the topical issues.

Of particular value are the results accumulated during several years thanks to processing and consideration of constitutional complaints. This year the Council's members noted that elaboration of legal positions of the Constitutional Court of Ukraine on examining constitutional complaints is a significant contribution to the draft of re-codification of the Civil Code of Ukraine.

Last year 6 new members were included to the Council's membership from among prominent Ukrainian scholars, which enabled to increase the representation of academic schools and institutions.

A number of requests for opinions on the part of judges-rapporteurs to the Council's members is constantly growing, with 65 requests in 2019 and 150 in 2020. Number of replies is also growing – 27 in 2019 and almost 100 by the end of 2020. To prepare opinions the Council members also involve other experts, whose opinion provides for a wider view on the essence of issues which are of interest for the Constitutional Court of Ukraine.

Thanks to coordination of positions of the Council's members and the judges of the Constitutional Court of Ukraine, an academic basis had been formed which is a substantial ground to shape the position of the Constitutional Court. Criteria of systematisation of the materials received are elaborated, a system of formation of areas of opinions upon academic interests of scholars is created to provide for more substantial materials.

#### **4.6. FINANCIAL SUPPORT FOR THE ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE**

The Constitution defines that “The State ensures funding and proper conditions for operation of the Constitutional Court of Ukraine. Expenditures for operation of the Court are allocated separately in the State budget of Ukraine, with account of the proposals of its Chairman” (see Article 148<sup>1</sup> of the Constitution of Ukraine).

The Law of Ukraine “On the State Budget of Ukraine for 2020” allocated to the Constitutional Court of Ukraine the expenditures in the amount of 314,445.5 thous. UAH, which is 0.0247% of all expenditures of the State Budget of Ukraine for 2020.

In 2020, funding of the activities of the Constitutional Court of Ukraine was, on the whole, in line with the volumes defined in the Law of Ukraine “On the 2020 State Budget of Ukraine”. Yet uneven financing during the budget year, high level of uncertainty as to the volumes of available funds in the last quarter along with other

circumstances negatively reflected on the volumes of factual financing of the Court system as compared to the planned indicators.

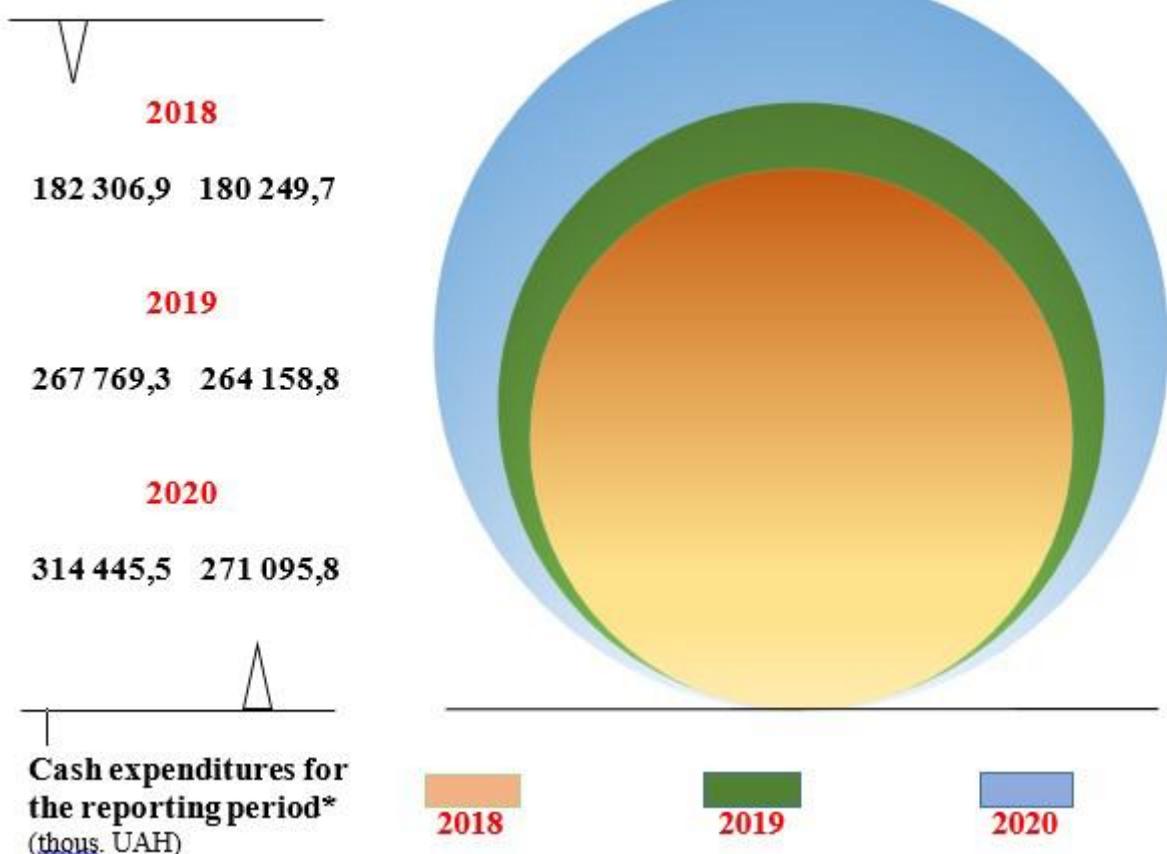
It is worth mentioning that an important factor influencing the state, scope and areas of Court financing in 2020 was introduction of quarantine measures related to the global coronavirus pandemic SARS-CoV-2 and related COVID-19 disease. For the purpose of implementing measures on preventing the spread of coronavirus infection, part of the Court's running costs was intended for purchase of individual protective equipment, antiseptic treatment equipment and sanitisers, permanent temperature screening of the staff and visitors, additional transport support of the staff and enhanced sanitary cleansing of working areas, in particular the courtrooms of the Grand Chamber, Senates, Boards of Judges, Judges' offices.

By the amendments to the Law of Ukraine "On the 2020 State Budget of Ukraine" approved by the Verkhovna Rada of Ukraine in April 2020 (No. 553-IX of 13 April 2020, BBP, 2020, No.19, p.126) the scope of budget assignment for the Court were reduced by 2 482,0 thousand UAH (including the development expenses – 2 000,0 thous. UAH) which made it impossible to implement some projects on renovation of material and technical basis. Limitations had been also introduced on maximum amount of payment for judges, civil servants and other Court employees which were in effect until August 28, 2020 when the Constitutional Court adopted the Decision No. 10-r/2020 in the case upon the constitutional petition of the Supreme Court on the constitutionality of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On the Establishment of Quarantine to Prevent the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2 in Ukraine and the Stages of Mitigation of Anti-Epidemic Measures", the provisions of Articles 29.1 and 29.3 of the Law "On the State Budget of Ukraine for 2020", paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020"".

In 2020 acute political and legal discussion regarding particular Court decisions provoked an increase in the public interest towards the Court functioning and financing. Some People's Deputies of Ukraine initiated a cut of budget assignments for the Constitutional Court of Ukraine. Hence, the fundamental principles of organisation of financing of the constitutional control body and ensuring its financial capacity and independence once again underwent a stress test.

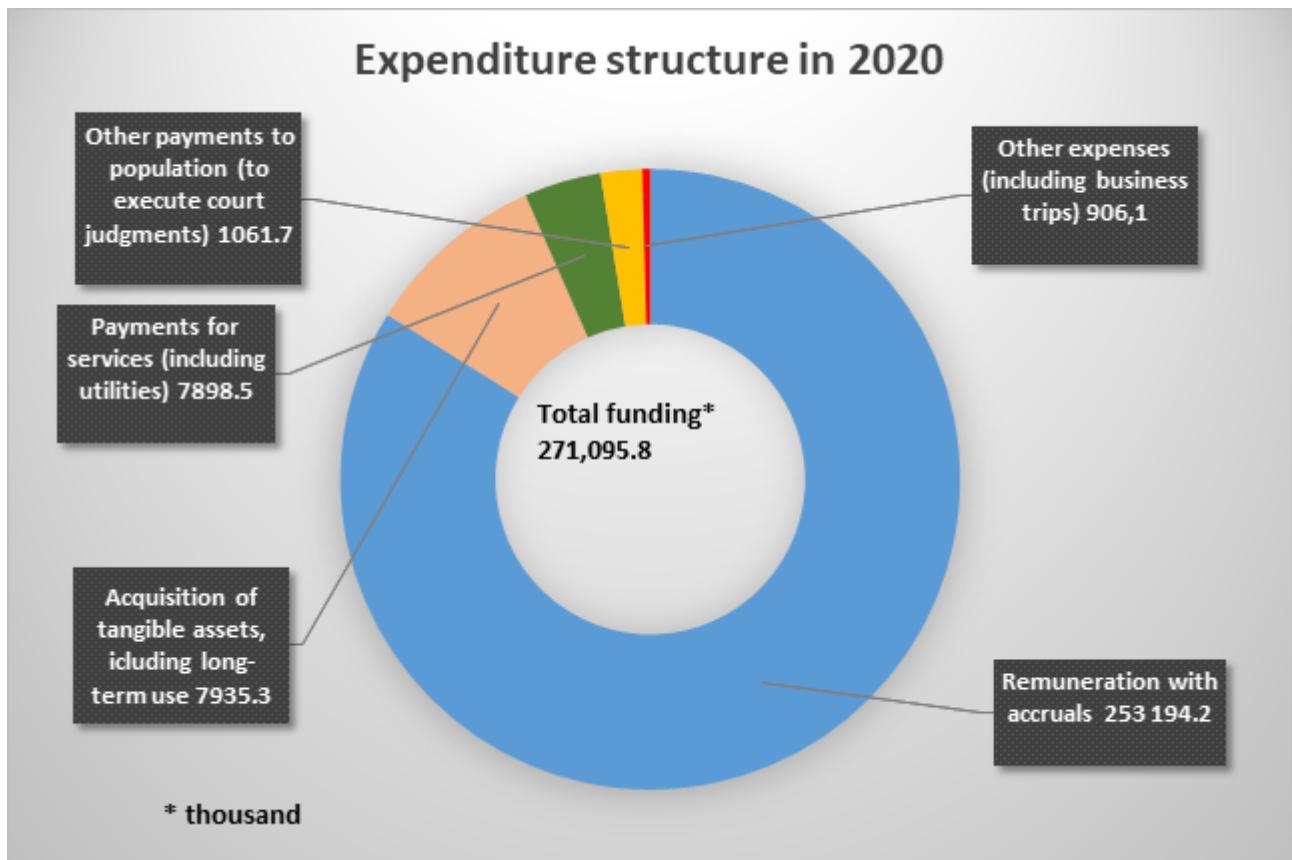
## Receipt and Use of Funds from the State Budget of Ukraine by the Constitutional Court of Ukraine

**Approved with account of  
amendments for the reporting year \***



In accordance with the Law of Ukraine "On the 2020 State Budget of Ukraine" as amended, the amount of budget allocations under the budget program 0801010 "Ensuring Constitutional Jurisdiction in Ukraine" amounted to 314,445.5 UAH. The actual expenditures of the Constitutional Court's system were 271,095.8 thous. UAH, or 86.2% of the annual plan.

In 2020, the payroll with accruals amounted to 93.4% of actual expenditure, or UAH 253,294.2. UAH 7,935.2 (or 2.93%) was spent to purchase tangible assets; UAH 7,898.5 (or 2.9%) - payment for services (including utilities); UAH 1,061.7 (0.4%) - other payments to population (execution of court judgments); UAH 906.1 (over 0.3%) – other expenses (including business trips).



In 2020 despite the limited financial capacities related to the development of material and technical basis the following tasks were implemented:

- in co-operation with the OSCE Project Co-ordinator in Ukraine establishment and technical equipping of the “Training Centre on Constitutional Law” was ensured. In particular, multimedia complex and video conference-system equipment were installed in separate premises; 20 notebooks with Wireless Access Points were installed; software for conducting virtual conferences, round tables, sessions and trainings were implemented;
- in order to upgrade possibilities to use online technologies in view of the quarantine measures related to COVID-19, a ZOOM-based server was placed in operation to conduct remote collectively and individually attended events;
- to renovate Court’s technological networks design and exploratory works and modernisation projecting and development of Court’s computer network were done;
- a server for the centralised backup system of the Court’s information systems on the basis of Acronis Cyber Protect 15 programme complex was put in operation;
- a highly-productive and multifunctional equipment for renovation of technical park of the Court’s computer and publishing complex was purchased;
- software for personnel work was modernised by implementing a complex “Automatised information and analytical system “Personnel WEB” and sub-system “Cabinet” of the “Personnel WEB” system employee.

## **V. PRIORITY DEVELOPMENT AREAS OF THE CONSTITUTIONAL COURT OF UKRAINE IN 2021**

Ensuring the supremacy of the Constitution of Ukraine, protection of human and civil rights and freedoms, improvement of the mechanism of individual access to constitutional justice, and its approximation to the European standards were, are and will further remain the strategic aim of the Constitutional Court of Ukraine. Alongside, in 2021 there should be manifested the priority tasks of strengthening the sole body of constitutional justice, relevant to the modern level of social development and legal awareness, raising effectiveness of its activities, achievement of indicators of high level of public trust to its decisions and to the Court on the whole.

The defining area of the Court's development in 2021 remains the improvement of organisational fundamentals of its activities in order to achieve better standards of accessibility and effectiveness. The legislative initiatives on improvement of the constitutional procedure are to be oriented toward these very issues. Consistent orientation towards international experience of organisation of constitutional justice should be preserved, legislative conditions for implementing best foreign practices into Court's work should be created for the effective protection of the constitutional human and civil rights and freedoms, raising the effectiveness of the mechanism of protection of these rights and freedoms.

Comprehensive improvement of the institute of constitutional complaint as an instrument of direct access to constitutional justice preserves its significance. In conditions of active development of digital technologies such improvement is able to cover all stages of a vital cycle of a complaint: from a more up-to-date form of submission of complaint as an electronic document (provided relevant legislative and technological foundations are created) to shaping opportunities of remote participation of a complainant in examination of the case in public parts of plenary sessions of the Court's bodies and possibilities of monitoring of the state of consideration of the complaint at all stages of constitutional proceedings.

An important task in the sphere of information support of the Court's activities in 2021 is the launch of the Court's electronic library with gradual replenishment with leading case-law of the European Court of Human Rights, jurisprudence of foreign constitutional courts on social issues, other information materials and results of research work in the field of constitutional law in Ukraine and abroad. Creation of possibilities to use a wide information and source base for the work of judges, judges' patronage offices and the Secretariat will enable the raise of the level of substantiation and motivation of the decisions upon constitutional appeals.

The global pandemic of coronavirus SARS-CoV-2 and COVID-19 disease provoked substantial changes in the organisation of work of almost all international and domestic bodies of power and institutions. The practice of holding international conferences, multi- and bilateral meetings, sessions and forums virtually is widely

spread around the world. This makes crucial the need to quickly implement the latest technological decisions on online organization of the work of the Court and its Secretariat as well as legislative support for such work at the level of boards of judges, the senates and the Grand Chamber of the Constitutional Court of Ukraine. Gradual renewal of IT software for quality broadcast of public hearings is to be implemented.

Highly crucial are issues of providing guarantees of financial independence of the Constitutional Court of Ukraine and observance of the requirements of the Constitution of Ukraine and the Law of Ukraine "On the Constitutional Court of Ukraine" on proper financing of the constitutional jurisdiction body. It is important to ensure the consistency and sustainability of positions of the executive and legislative bodies on the fundamentals of financial stability of the Court.

For further development of the material and technical base of the Constitutional Court of Ukraine and completion of the formation of its integrated property complex, the Law of Ukraine "On the 2021 State Budget of Ukraine" stipulates development expenditures in the amount of 4, 890 thous. UAH for developing project documents related to "Reconstruction of building "A" with building "B" extension of the administrative building of the Constitutional Court of Ukraine, 14 Zhylianska str., Holosiivskyi district, the city of Kyiv". The main tasks of the future project decisions related to building "B" is the creation of proper conditions at the Constitutional Court for:

Holding international events (conferences, round tables, seminars) on crucial issues of constitutional law;

Sessions of the Research and Advisory Council and its working bodies;

Improving the accessibility of funds of the Library and the Archives of the Constitutional Court of Ukraine for students, post-graduate students, doctorate students, representatives of professional legal associations, NGOs;

Providing the Court and its Secretariat with working premises with modern equipment (publishing and printing complex, server centre for data processing and storage etc.).

Obviously, the principle approaches to strengthening the material base of the Constitutional Court of Ukraine reflected in relevant indicators of Court's development expenditures in the 2021 State Budget of Ukraine should be preserved and developed in future budget periods.



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INFORMATION REPORT  
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*The Information Report of the Constitutional Court of Ukraine highlights the most important aspects of the work of the Constitutional Court of Ukraine in 2020. Particular attention is paid to the powers of the Constitutional Court of Ukraine, its composition and organisational structure. An important place in the report is given to the review of the judicial activity of the Constitutional Court, in particular to the analysis of the acts adopted by the Constitutional Court in response to constitutional submissions, appeals and complaints, as well as their observance. In addition, the Report contains information on international cooperation, interaction of the Constitutional Court of Ukraine with civil society, as well as support to its operations.*

