



THE CONSTITUTIONAL COURT OF UKRAINE

INFORMATION REPORT

2021

*Approved by the Resolution of the Constitutional Court of Ukraine
dated June 16, 2022 No. 13-p/2022*



TABLE OF CONTENTS

PREFACE	3
I. THE CONSTITUTIONAL COURT OF UKRAINE IN 2021	4
II. ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE PERTAINING TO THE EXERCISE OF CONSTITUTIONAL REVIEW	8
2.1. Protection of constitutional rights and freedoms: acts of the Constitutional Court of Ukraine adopted in 2021	8
2.2. Cases pending before the Constitutional Court of Ukraine as of December 31, 2021	37
2.3. Refusal to initiate constitutional proceedings	69
2.4. Execution of the acts of the Constitutional Court of Ukraine (monitoring of the state of execution)	70
2.5. Activities of the Constitutional Court of Ukraine pertaining to the exercise of constitutional review in 2021: specific conclusions	76
III. EXTRAJUDICIAL ACTIVITIES	79
3.1. Events and activities	79
3.2. Participation in the scientific events, organised by the partners of the Constitutional Court of Ukraine	93
3.3. Research and Advisory Council of the Constitutional Court of Ukraine	102
3.4. The Constitutional Court of Ukraine and civil society	103
3.5. International cooperation	106
IV. SUPPORT OF THE WORK OF THE CONSTITUTIONAL COURT OF UKRAINE	108
4.1. The Secretariat of the Constitutional Court of Ukraine	108
4.2. The Archive of the Constitutional Court of Ukraine	118
4.3. The Library of the Constitutional Court of Ukraine	119
4.4. Official publication of the Constitutional Court of Ukraine	121
4.5. Financial support for the activities of the Constitutional Court of Ukraine	122
V. PRIORITY DEVELOPMENT AREAS OF THE CONSTITUTIONAL COURT OF UKRAINE	125
VI. THE CONSTITUTIONAL COURT OF UKRAINE IN FIGURES	126

PREFACE

Pursuant to Article 43 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the Court publishes an annual information report upon the results of its activities and financial support in the previous year.

During 2021, the Constitutional Court of Ukraine adopted 609 acts, including 10 decisions upon the constitutional petitions and constitutional complaints (3 decisions of the Grand Chamber of the Constitutional Court of Ukraine, 7 decisions of Senates of the Constitutional Court of Ukraine), 165 rulings refusing to initiate constitutional proceedings and 6 rulings to terminate the constitutional proceedings in the case.

Annual information report of the Constitutional Court of Ukraine is an analytical document which includes:

- indicators on the number of appeals to the Constitutional Court of Ukraine, decisions, opinions, rulings of the Constitutional Court of Ukraine, acts declared unconstitutional by the Constitutional Court of Ukraine, etc.;
- analysis of the content of appeals to the Constitutional Court of Ukraine;
- analysis of the content of the acts adopted by the Constitutional Court of Ukraine;
- information on whether all acts adopted by the Constitutional Court of Ukraine during the reporting period have been implemented;
- information on the cooperation of the Court with the bodies of constitutional jurisdiction of other states, international courts and international organisations, on the participation of judges of the Constitutional Court of Ukraine in scientific and practical conferences, symposia, professional national, international and other events;
- proposals on strategic planning of the activities of the Constitutional Court of Ukraine and related budget expenditures.

The annual information report of the Constitutional Court of Ukraine for 2021 in accordance with the requirements set by law covers the activities of the Constitutional Court of Ukraine to exercise constitutional review, its extrajudicial activities, details the activities of the Constitutional Court of Ukraine, identifies priority areas for development of the Constitutional Court of Ukraine, provides for statistical data on the results of work in 2021.

I. THE CONSTITUTIONAL COURT OF UKRAINE IN 2021



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

In 2021, the composition of the Constitutional Court of Ukraine and its bodies changed.

From January 1, 2021 to February 24, 2021, the Court consisted of 15 judges, and from 24 February 2021 to 31 December 2021, it consisted of 16 judges:

Oleksandr TUPYTSKYI, Chairman of the Constitutional Court of Ukraine, born on January 28, 1963, appointed to the office on May 14, 2013, took the oath on May 15, 2013, Candidate of Sciences in Public Administration;

Serhiy HOLOVATY, Deputy Chairman of the Constitutional Court of Ukraine, born on May 29, 1954, appointed to the office on February 27, 2018, took the oath on March 2, 2018, Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Honoured Lawyer of Ukraine;

Viktor HORODOVENKO, Judge of the Constitutional Court of Ukraine, born on February 22, 1968, appointed to the office on November 13, 2017, took the oath on November 21, 2017, Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Honoured Lawyer of Ukraine;

Iryna ZAVHORODNIA, Judge of the Constitutional Court of Ukraine, born on October 31, 1964, appointed to the office on September 20, 2018, took the oath on September 24, 2018, Candidate of Law, Honoured Lawyer of Ukraine;

Oleksandr KASMININ, Secretary of the Board of Judges of the Constitutional Court of Ukraine, born on January 10, 1966, appointed to the office on September 19, 2013, took the oath on September 19, 2013, Candidate of Law, Honoured Lawyer of Ukraine;

Viktor KYCHUN, Judge of the Constitutional Court of Ukraine, born on June 19, 1968, appointed to the office on February 19, 2021, took the oath on February 24, 2021, Candidate of Law, Associate Professor;

Viktor KOLISNYK, Secretary of the Board of Judges of the Constitutional Court of Ukraine, born on July 19, 1960, appointed to the office on January 26, 2016, took the oath on January 27, 2016, Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine;

Viktor KRYVENKO, Judge of the Constitutional Court of Ukraine, born on August 6, 1955, appointed to the office on November 13, 2015, took the oath on January 27, 2016, Candidate of Law, Associate Professor, Honoured Lawyer of Ukraine;

Vasyl LEMAK, Judge of the Constitutional Court of Ukraine, born on February 15, 1970, appointed to the office on February 27, 2018, took the oath on March 2, 2018, Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine;

Oleksandr LYTVYNOV, Secretary of the Board of Judges of the Constitutional Court of Ukraine, born on April 2, 1965, appointed to the office on February 22, 2013, took the oath on May 15, 2013, Candidate of Law;

Volodymyr MOISYK, Judge of the Constitutional Court of Ukraine, born on August 18, 1957, appointed to the office on January 26, 2016, took the oath on January 27, 2016, Candidate of Law, Honoured Lawyer of Ukraine;

Oleh PERVOMAISKYI, Judge of the Constitutional Court of Ukraine, born on January 31, 1972, appointed to the office on September 20, 2018, took the oath on September 24, 2018, Candidate of Law, Associate Professor;

Serhiy SAS, Judge of the Constitutional Court of Ukraine, born on August 7, 1957, appointed to the office on March 13, 2014, took the oath on March 13, 2014, Candidate of Law;

Ihor SLIDENKO, Secretary of the Board of Judges of the Constitutional Court of Ukraine, born on June 14, 1973, appointed to the office on March 13, 2014, took the oath on March 13, 2014, Doctor of Law, Senior Researcher, Associate Professor;

Petro FILIUK, Judge of the Constitutional Court of Ukraine, born on April 11, 1961, appointed to the office on October 30, 2019, took the oath on November 5, 2019, Candidate of Law, Honoured Lawyer of Ukraine;

Galyna YUROVSKA, Secretary of the Board of Judges of the Constitutional Court of Ukraine, born on November 30, 1961, appointed to the office on October 29, 2019, took the oath on November 5, 2019, Candidate of Law, Honoured Lawyer of Ukraine.

THE GRAND CHAMBER OF THE CONSTITUTIONAL COURT OF UKRAINE

(as of December 2021)



**Oleksandr
TYPYTSKYI**
(Chairman)



**Serhiy
HOLOVATY**
(Deputy Chairman)



**Viktor
HORODOVENKO**



**Iryna
ZAVHORODNIA**



**Oleksandr
KASMININ**



**Viktor
KYCHUN**



**Viktor
KOLISNYK**



**Viktor
KRYVENKO**



**Vasyl
LEMAK**



**Oleksandr
LYTVYNOV**



**Volodymyr
MOISYK**



**Oleh
PERVOMAISKYI**



**Serhiy
SAS**



**Ihor
SLIDENKO**



**Petro
FILIUK**



**Galyna
YUROVSKA**

THE FIRST SENATE OF THE CONSTITUTIONAL COURT OF UKRAINE



**Oleksandr
TYPYTSKYI**
(Chairman)



**Iryna
ZAVHORODNIA**



**Viktor
KOLISNYK**



**Oleksandr
LYTVYNOV**



**Viktor
KYCHUN**



**Viktor
KRYVENKO**



**Serhiy
SAS**



**Petro
FILIUK**

THE FIRST BOARD OF JUDGES OF THE JUDGES OF THE FIRST SENATE OF THE COURT

- **Viktor KOLISNYK**, *Secretary*
- **Petro FILIUK**
- **Viktor KYCHUN**

THE SECOND BOARD OF JUDGES OF JUDGES OF THE FIRST SENATE OF THE COURT

- **Oleksandr TYPYTSKYI**
- **Serhiy SAS**
- **Viktor KRYVENKO**, *temporarily involved*
(*Ruling of the First Senate dated January 15,
2020 No. 1-u(1)2020*)

THE THIRD BOARD OF JUDGES OF THE FIRST SENATE OF THE COURT

- **Oleksandr LYTVYNOV**, *Secretary*
- **Iryna ZAVHORODNIA**
- **Viktor KRYVENKO**

THE SECOND SENATE OF THE CONSTITUTIONAL COURT OF UKRAINE



**Serhiy
HOLOVATY**
(Chairman)



**Viktor
HORODOVENKO**



**Oleksandr
KASMININ**



**Volodymyr
MOISYK**



**Vasyl
LEMAK**



**Oleh
PERVOMAISKYI**



**Ihor
SLIDENKO**



**Galyna
YUROVSKA**

THE FIRST BOARD OF JUDGES OF THE SECOND SENATE OF THE COURTARY

- Galyna YUROVSKA, Secretary
- Volodymyr MOISYK

temporarily involved:

- Vasyl LEMAK (*Ruling of the Second Senate dated December 8, 2020 No. 31-u(II)2020*)
- Viktor HORODOVENKO (*Ruling of the Second Senate dated February 10, 2021 No. 2-u(II)2021*)
- Oleh PERVOMAISKYI (*Ruling of the Second Senate dated April 14, 2021 No. 10-u(II)2021*)
- Serhiy HOLOVATY (*Ruling of the Second Senate dated June 16, 2021 No. 12-u(II)2021*)
- Ihor SLIDENKO (*Ruling of the Second Senate dated September 1, 2021 No.13-u(II)2021*)
- Viktor HORODOVENKO (*Ruling of the Second Senate dated November 10, 2021 No. 33-u(II)2021*)

THE SECOND BOARD OF JUDGES OF THE SECOND SENATE OF THE COURT

- Ihor SLIDENKO, Secretary
- Serhiy HOLOVATY
- Vasyl LEMAK

THE THIRD BOARD OF JUDGES OF THE SECOND SENATE OF THE COURT

- Oleksandr KASMININ, Secretary
- Viktor HORODOVENKO
- Oleh PERVOMAISKYI

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

2.1. Protection of constitutional rights and freedoms: acts of the Constitutional Court of Ukraine adopted in 2021

DECISIONS

DECISION dated July 14, 2021 No. 1-r/2021



The case upon the constitutional petition of 51 People's Deputies of Ukraine on the conformity of the Law "On Ensuring the Functioning of the Ukrainian Language as the State Language" with the Constitution of Ukraine (constitutionality)

Judge-Rapporteur: S. Holovaty

The Constitutional Court of Ukraine declared the provisions of the Law "On Ensuring the Functioning of the Ukrainian Language as the State Language" of April 25, 2019 No. 2704 – VIII as amended to be in conformity with the Constitution of Ukraine (constitutional).

In the Decision, the Constitutional Court of Ukraine noted, in particular, the following: “<...> the Ukrainian language is an inseparable attribute of Ukrainian statehood, which retains its historical continuity from the ancient Kyiv era. The Ukrainian language is the final condition (*conditio sine qua non*) of Ukraine's statehood and its unity. <...> therefore, any encroachment on the legal status of the Ukrainian language as the state language on the territory of Ukraine is inadmissible, since it violates the constitutional order of the state, threatens national security and the very existence of the statehood of Ukraine.”

The Court stated that it is the duty of every citizen of Ukraine to speak Ukrainian as the language of their citizenship. At the same time, every citizen of Ukraine is free to choose the language or languages for private communication. The functioning of the Ukrainian language as the state language and its support by the state must be combined with respect for the languages of national minorities historically living within Ukraine and ensuring the protection of the language rights of persons belonging to such minorities.

The Constitutional Court of Ukraine found that the challenged Law does not include provisions that may restrict the free development, use and protection of languages that have the legal status of national minority languages (including Russian), as well as those provisions that would prevent the state from promoting identity, in particular language one, indigenous peoples and national minorities of Ukraine.

The Constitutional Court of Ukraine stated that the legislative regulation aimed at establishing the Ukrainian language as the state language also protects the democratic system of our state, and the means chosen by the legislator within the differentiated approach applied in the Law are commensurate with the legitimate aim pursued in the challenged Law.

The Court considers that the challenged Law is a legal instrument for overcoming the consequences of the long stay of different parts of Ukraine in other states and the general russification of Ukraine, which lasted more than a century during Ukraine's stay in first tsarist Russia and later the USSR, and is a proper legal basis for introduction of institutional mechanisms that ensure the functioning of the Ukrainian language as the state language with the possibility for the state to take affirmative action measures in favour of the Ukrainian language, without hindering the development, use and protection of languages of national minorities of Ukraine.

The Constitutional Court of Ukraine did not find a violation of the right of legislative initiative of the People's Deputies of Ukraine during the consideration of the disputed Law at the plenary sittings of the Verkhovna Rada of Ukraine and its adoption.

In defending the position, the subject of the right to constitutional petition referred, in particular, to the European Charter for Regional or Minority Languages, ratified by the Law of Ukraine of May 15, 2003 No. 802 – IV. The Constitutional Court of Ukraine noted that the challenged Law is not and cannot be an instrument of its implementation. The law and the Charter, as their names and content show, have completely different subjects of regulation. Therefore, raising the issue of compliance or non-compliance of the Law with the provisions of the Charter is artificial and legally incorrect.

Separate opinions of the judges V.Kolisnyk, O.Lytvynov, O.Pervomaiskyi, S.Sas, G.Yurovska, as well as concurring opinions of S.Holovaty and V.Lemak were attached to the Decision. The judges of the Constitutional Court of Ukraine expressed their own opinions and remarks, in particular regarding the motivation provided in the Decision and specific procedural aspects of the adoption of the Decision.

DECISION No. 2-r/2021 of July 15, 2022



The case upon the constitutional petition of 47 People's Deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 6.6 of the Law of Ukraine "On Remuneration of Labour" of March 24, 1995 No. 108/95–VR as amended by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine" of December 6, 2016 No. 1774–VIII, Article 96.6 of the Labour Code of Ukraine as amended by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine" of December 6, 2016 No. 1774–VIII

Judge-Rapporteur: Oleh Pervomaiskyi

The Constitutional Court of Ukraine declared the provisions of Article 6.6 of the Law of Ukraine "On Remuneration of Labour" of March 24, 1995 No. 108/95–VR as amended by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine" of December 6, 2016 No. 1774–VIII, Article 96.6 of the Labour Code of Ukraine as amended by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine" of December 6, 2016 No. 1774–VIII to be in compliance with the Constitution of Ukraine (are constitutional).

In delivering its decision, the Constitutional Court of Ukraine proceeded from the fact that under current legislation the minimum official salary (tariff rate) is a type of state social guarantees, has its own structure divided into basic, additional and other incentive and compensation payments. The minimum official salary (tariff rate) is not a kind of state social guarantees, is functionally used in the formation of the tariff system of remuneration and is the basis for the differentiation of wages. At the same time, the amount of the minimum wage and the amount of the minimum official salary (tariff rate) cannot be lower than the subsistence minimum. The specified difference in the essence of the minimum wage (minimum amount of wage) and the minimum salary (tariff rate) gives the Constitutional Court of Ukraine grounds for concluding that their functional purpose is unequal.

Evaluating for legal certainty Article 6.6 of the Law as amended by Law No. 1774 and Article 96.6 of the Code as amended by Law No. 1774, which provides for the same provision: "The minimum official salary (tariff rate) is set at an amount not less than the subsistence level, established for able-bodied persons on January 1 of the calendar year", the Constitutional Court of Ukraine held that the content of these norms is clear and understandable.

The Constitutional Court of Ukraine takes into account the fact that the interpretation and further application of the contested provisions of the Law as amended by Law No. 1774 and the Code as amended by Law No. 1774 may require the subject of law enforcement to take into account a number of provisions of the Constitution and laws of Ukraine, primarily in the aspect of determining the amount of subsistence level determined by law for able-bodied persons on January 1 of the calendar year. However, in the opinion of the Constitutional Court of Ukraine, the specified peculiarity in the wording of the contested norms of the Law as amended by Law No. 1774 and the Code as amended by Law No. 1774 does not affect their legal certainty and is due to the prescription of Article 46 of the Constitution of Ukraine

regarding the powers of the Verkhovna Rada of Ukraine to determine the amount of the subsistence level by law.

The Constitutional Court of Ukraine takes into account that the subject of the application of the contested provisions of the Law as amended by Law No. 1774 and the Code as amended by Law No. 1774 are not employees, employers or other participants in labour relations, but the Cabinet of Ministers of Ukraine, which in accordance with part one of Article 113 of the the Constitution of Ukraine is the highest body in the system of executive authorities. The Cabinet of Ministers of Ukraine, establishing the minimum official salary (tariff rate) on the basis of the Constitution and laws of Ukraine adopted in accordance with the Constitution of Ukraine, has the opportunity to clearly and unambiguously understand the content of the contested norms of the Law as amended by Law No. 1774 and the Code as amended by Law No. 1774.

The Constitutional Court of Ukraine also took into account that Law No. 1774 amended the Law in terms of establishing guarantees for ensuring that employees receive the minimum wage. According to Article 31 of the Law as amended by Law No. 1774, the amount of an employee's salary for a fully completed monthly (hourly) rate of work cannot be lower than the amount of the minimum wage (paragraph one); if the accrued salary of an employee who has completed the monthly labour rate is lower than the legally established amount of the minimum wage, the employer makes an additional payment up to the level of the minimum wage, which is paid monthly simultaneously with the payment of the salary (paragraph three); if the amount of the salary due to the frequency of payment of its components is lower than the amount of the minimum wage, an additional payment is made to the level of the minimum wage (parahraph four).

Thus, even if the Cabinet of Ministers of Ukraine establishes a minimum official salary (tariff rate) in an amount lower than the minimum wage, the application of the norms of the current legislation in their entirety guarantees compliance with the requirements of paragraph four of Article 43 of the Constitution of Ukraine.

The analysis of the provisions of Articles 1 and 48 of the Basic Law of Ukraine in the systemic connection with its other provisions and the legal positions previously formulated by the Constitutional Court of Ukraine makes it possible to come to the conclusion that every person has the constitutional right to a sufficient standard of living for himself/herself and his/her family, which does not provide as a mandatory prerequisite for the realisation of this constitutional right the physical, intellectual or other capacity of a person to perform a labour function, and even more so the actual performance of such a function.

Therefore, the minimum amount of payments that everyone should receive as the main source of livelihood to guarantee the realisation of the constitutional right to a sufficient standard of living is the subsistence minimum, the size of which, taking into account its essence and purpose, is determined by the Verkhovna Rada of Ukraine in the relevant law.

In order to implement the provisions of the Constitution and laws of Ukraine, the Cabinet of Ministers of Ukraine based on the contested provisions of the Law as

amended by Law No. 1774 and the Code as amended by Law No. 1774 are required to set the minimum salary (tariff rate) in such a way that its application in the tariff wage system not only ensures a sufficient standard of living for those who work, but also encourages the employee to improve living conditions for himself/herself and his/her family.

On the basis of the above, the Constitutional Court of Ukraine held that Article 6.6 of the Law as amended by Law No. 1774, Article 96.6 of the Code as amended by Law No. 1774 do not contradict Articles 1 and 48 of the Constitution of Ukraine.

Dissenting opinions of the judges O.Lytvynov and G.Yurovska in which the positions of the judges of the Constitutional Court of Ukraine are expressed regarding the motivation and operative parts of the Decision, as well as regarding the observance of legal guarantees of the activity of the judge of the Constitutional Court of Ukraine during its adoption were attached to the Decision.

DECISION No. 3-r/2021 of December 21, 2021



The case upon the constitutional petition of 47 People's Deputies concerning the conformity of specific provisions of Article 6 of the Law "On Television and Radio Broadcasting", Articles 15, 15¹ and 26 of the Law "On Cinematography" with the Constitution (constitutionality)

Judge-Rapporteur: Viktor Kolisnyk

The Constitutional Court of Ukraine declared the provisions of the first sentence of Article 6.2.10 of the Law "On Television and Radio Broadcasting" of December 21, 1993 No. 3759–XII as amended, Articles 15.3.4, 15.4.4, 15.6, 15.7, 15¹.1, the second sentence of Article 15¹.2 of the Law "On Cinematography" of January 13, 1998 No. 9/98–VR as amended to be in conformity to the Constitution (constitutional) and terminated the constitutional proceedings in terms of compliance of the provision of Article 26.3 of Law No. 9 with the Constitution of Ukraine (constitutionality) pursuant to Article 62.1.3 of the Law "On the Constitutional Court of Ukraine" – inadmissibility of the constitutional petition with the requirements, envisaged by the law.

In delivering the Decision, the Constitutional Court of Ukraine formulated the conclusion that human freedom is not absolute and can be limited in the cases stipulated by law and only to achieve a legitimate goal.

State policy in the spheres of national security and defense is aimed primarily at ensuring Ukraine's military, foreign policy, state, economic, and information security. Ukraine has the right to protect its independence, its state sovereignty and its territorial integrity by implementing such systematic measures and applying means that are proportionate, permissible and acceptable in view of the level of danger, threats and challenges faced by it.

The Constitutional Court of Ukraine came to the conclusion that a person who, in particular, promoted violence and called for the overthrow of the constitutional order

in Ukraine, participated in the activities of illegal armed groups and in combat operations on the territory of Ukraine as part of illegal armed groups, expressed support for the aggressive policy of the state-occupier and carried out propaganda or other actions aimed at denying the right of the Ukrainian people to their own statehood, may be included in the List of persons who pose a threat to national security.

The restrictions established by the first sentence of Article 6.2.10 of Law No. 3759, Articles 15.3.4, 15.4.4, 15.7 of Law No. 9 are permissible and acceptable, do not violate the rights to information, freedom of thought and speech and freedom of creativity, do not contradict the Constitution of Ukraine.

The above contested provisions of Law No. 3759 and Law No. 9 have a legitimate purpose and are aimed at protecting information security, state sovereignty and territorial integrity of Ukraine, at preventing the destructive informational and propaganda influence and pressure of the occupying state on the consciousness and subconsciousness of Ukrainian citizens with the help of audiovisual works and means.

The Constitutional Court of Ukraine believes that the central bodies of the executive power of Ukraine can have the appropriate discretionary powers and carry out normative regulation of the procedure for entering a person into the List of persons who pose a threat to national security, in particular by adopting by-laws. Therefore, taking into account the need to ensure the national security of Ukraine and to find a reasonable balance between the observance of the rights and freedoms of a person and a citizen and the elimination of real challenges and threats facing Ukraine as a state that suffers from the aggressive state policy of Russia and is forced to fight in defense of state sovereignty, the Constitutional Court of Ukraine concluded that the provisions of Article 15.6 of Law No. 9 do not contradict the Constitution of Ukraine.

The Constitutional Court of Ukraine noted that one of the permissible and acceptable coercive regulatory means applied by the Ukrainian state to protect itself from armed aggression, occupation and the aggressive state policy of the Russian Federation towards Ukraine is the ban on broadcasting films in accordance with the provisions of Article 15¹ of Law No. 9, therefore, provisions of Article 15^{1.1} and the second sentence of Article 15^{1.2} of Law No. 9 do not contradict the Constitution of Ukraine.

Dissenting opinions of judges O.Lytvynov, O.Pervomaiskyi, S.Sas were supplemented to the Decision. In the opinions, considerations are expressed regarding the sufficiency of the motivation of the Decision, the debatable nature of terminating the constitutional proceedings in terms of compliance with the Constitution of Ukraine (constitutionality) of the provision of Article 26.3 of Law No. 9 and regarding other procedural aspects of the delivering the Decision.

DECISION No.1-r(II)/2021 of April 7, 2021



The case upon the constitutional complaint of citizen Oleksandr Diachenko and other citizens of Ukraine on the compliance of paragraph 4.13 of Section I of the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76–VIII with the Constitution of Ukraine (constitutionality)

Judge-Rapporteur: S.Holovaty

The Constitutional Court of Ukraine declared the provisions of Article 54.3 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster” of February 28, 1991 No.796-XII (Law No.796) as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII (Law No.76) on authorisation by the Verkhovna Rada of Ukraine of the Cabinet of Ministers of Ukraine to determine by its acts the minimum amounts of disability pension caused by injury or illness and pension in connection with the loss of a breadwinner as a result of the Chernobyl disaster as such that do not comply with the Constitution of Ukraine (are unconstitutional) and shall cease to be valid three months after the date of the adoption of this Decision by the Constitutional Court of Ukraine.

The Verkhovna Rada of Ukraine, within three months from the date of adoption of this Decision by the Constitutional Court of Ukraine, is instructed to introduce the normative regulation established by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster” dated February 28, 1991 No. 796–XII as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No. 76–VIII, regarding the authorisation of the Verkhovna Rada of Ukraine to the Cabinet of Ministers of Ukraine to determine acts on the minimum amounts of a disability pension due to disability or illness, and a pension in connection with the loss of a breadwinner as a result of the Chernobyl disaster, in conformity with the Constitution of Ukraine and this Decision.

According to the operative part of the Decision, in the case of non-compliance with the Constitution of Ukraine and this Decision, Article 54.4 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster” will apply three months after the adoption of this Decision by the Constitutional Court of Ukraine catastrophe” dated February 28, 1991 No. 796-XII as amended by the Law of Ukraine “On Amendments and Supplements to the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster”” dated June 6, 1996 No. 230/96-VR:

“In all cases, the amounts of pensions for the disabled, in respect of which a connection with the Chernobyl disaster has been established, cannot be lower than:

- for the I group of disability - 10 minimum old-age pensions;
- for the II group of disability – 8 minimum old-age pensions;
- for the III group of disability – 6 minimum old-age pensions;
- disabled children - 3 minimum old-age pensions”.

Citizens of Ukraine, who are subject to Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster” dated February 28, 1991 No. 796-XII, have the right to compensation for the damage they suffered as a result of Article 54.3 of this law as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” dated December 28, 2014 No. 76-VIII.

In delivering the Decision, the Constitutional Court of Ukraine proceeded from the fact that the state can change the legislative regulation in the field of social protection of persons who suffered as a result of the Chernobyl disaster, but should not resort to restrictions that violate the essence of their individual rights, and the achieved level of social protection must be preserved. However, the state, represented by the Cabinet of Ministers of Ukraine, determined the minimum amounts of the state pension for disability caused by disability or illness, and the pension in connection with the loss of a breadwinner as a result of the Chernobyl disaster, in amounts significantly smaller than those guaranteed by Law No. 796 as amended by Law No. 230/96, nullifying the very essence of the rights and guarantees defined by Articles 3, 16, 50 of the Constitution of Ukraine, which is actually a failure by the state to fulfill its positive obligation to provide this category of persons with a guaranteed level of social protection.

The Constitutional Court of Ukraine emphasised that, in accordance with Articles 3, 16, and 50 of the Constitution of Ukraine, in their relationship, the state has a positive obligation to provide enhanced social protection to persons with disabilities from among the victims of the Chernobyl disaster. The positive duty of the state in this case, in fact, requires it to take measures of affirmative action given that it is about the duty of the state to protect one of the most vulnerable segments of the population that needs it.

Singling out by the legislator from the category of persons who suffered as a result of the Chernobyl disaster, persons who require special treatment by the state - persons with disabilities from among the participants in the liquidation of the consequences of the accident at the Chernobyl Nuclear Power Plant, as well as from among the victims of the Chernobyl disaster, and the introduction for this category of persons of the state pensions and the establishment of their minimum amounts at the level of the law should be considered as a manifestation of the state's affirmative actions for these persons.

The Constitutional Court of Ukraine considers that the social obligations of the state to citizens who lost their health due to the fact that the state at one time obliged them to take part in overcoming the consequences of the accident at the Chernobyl NPP - a catastrophe of a planetary scale, and who suffered disabilities as a result of such actions, as well as to persons with disabilities from among the victims of this disaster, should not depend on the financial capabilities of the state and its economic situation. Therefore, social guarantees, in particular the minimum level of social protection for this category of persons, must be established by the legislator. The Cabinet of Ministers of Ukraine, as a state body authorised to develop a draft law on the State Budget of Ukraine and to ensure the implementation of the corresponding law approved by the legislator, should determine the conditions and procedure for assigning

the minimum amounts of state pension established by law for the specified category of persons.

The Constitutional Court of Ukraine also assumed that for almost 24 years, from the time Law No. 796 came into effect on April 1, 1991, and until Law No. 76 came into effect on January 1, 2015, persons classified in category 1 received the minimum state pension was guaranteed by the state at the level of law. Consequently, the applicants could count on reasonable stability of the legislation, and they also had a legitimate expectation that their guaranteed right to a certain level of social security would be realized. The Constitutional Court of Ukraine concluded that the state, represented by the Cabinet of Ministers of Ukraine, reduced the guaranteed minimum amounts of the state pension, which were provided for in Article 54 of Law No. 796 before the amendments were introduced by Law No. 76. The consequence of the measures taken by the state was the deprivation of the applicants' property in terms of how it interpreted by the European Court of Human Rights.

The development of the legal position stated in Decision No. 6-r/2018 dated July 17, 2018, in which, based on the content of Article 16 of the Constitution of Ukraine, the ultimate need to preserve the gene pool of the Ukrainian people, which is “caused, first of all, by the unsatisfactory ecological situation, caused, in particular, by the Chernobyl disaster, the consequence of which was the deterioration of the health of the population, demographic decline, the increase in the mortality rate of victims of the Chernobyl disaster, the morbidity of children, and the increase in the level of disability of the population. Extremely serious consequences caused by this disaster are also problems of a social and psychological nature in the citizens affected by the Chernobyl disaster” (paragraph 3.2 of the motivational part), the Constitutional Court of Ukraine noted that the Chernobyl disaster is the world's largest environmental disaster in the entire history of nuclear energy man-made in terms of the number of deaths, victims of its consequences, the scale of radioactive contamination of territories, primarily in Ukraine. The participants in the liquidation of the consequences of the accident at the Chornobyl Nuclear Power Plant and the victims of the Chernobyl disaster (including children with disabilities) who were diagnosed with disabilities as a result of the disaster experienced a particularly devastating impact on the lives, physical and psychological health.

The Constitutional Court of Ukraine also emphasised that from the provisions of Articles 3, 16, 50 of the Constitution of Ukraine, in their interrelationship, not only the state's obligations to Ukrainian citizens affected by the Chernobyl disaster, but also guarantees for this category of citizens emerge.

The Constitutional Court of Ukraine considers that the state must compensate the citizens of Ukraine, who are subject to the effect of Article 54 of Law No. 796, caused to them as a result of the effect of Article 54.3 of Law No. 796 as amended by Law No. 76, and with the aim of real renewal of the rights of these citizens of Ukraine the state is obliged to develop a procedure (legal mechanism) for compensation of such damage.

A dissenting opinion of judge V.Lemak was supplemented to the decision, which provides comments and own considerations regarding the methodological approach applied in the Decision and the individual arguments presented therein.



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

Judge-Rapporteur: O.Pervomaiskyi

The Constitutional Court of Ukraine held to declare the provisions of Articles 13.3 and 16.6 of the Civil Code of Ukraine (Code) according to which „actions of a person committed with intent to harm another person, as well as abuse of rights in other forms are not allowed“, „a court may refuse to protect a person's civil rights and interests in case of his or her violation of the provisions of paragraphs two to five of Article 13 of the Code to be in conformity to the Constitution (constitutional).

In delivering the Decision, the Constitutional Court of Ukraine assumed that the application of the Code and other sources of civil law to regulate civil relations is possible, first of all, on the condition of a clear and complete understanding of the content of the prescriptions contained in them. Taking into account the presence of a large number of sources of civil law, which are among themselves in complex hierarchical (by legal force) and content relations, the interpretation and further application of the norms of any of these sources, in particular the Code, are based on the need to take into account the legal force and the existing connection between different norms contained in the Code and sources of civil law. In addition, the interpretation and application of the sources of civil law by the courts in any case should be based on such principles of civil law as justice, good faith and reasonableness.

Resolving the issue of compliance of the disputed provisions of the Code with the requirement of legal certainty, the Constitutional Court of Ukraine noted that Article 13.3 of the Code, in particular the phrase „as well as abuse of the right in other forms“, should be interpreted and applied not separately from other provisions of the law, but in their current context relationship with the norms of the Code, primarily with those contained in its Articles 3, 12, 13; a participant in civil relations, if necessary, with the help of appropriate consultation, will be able to reasonably predict which of his/her actions may later be qualified as dishonest and which violate the limits of the exercise of civil rights, in particular in the form of abuse of rights, and what the legal consequences of such actions may be. Regarding Article 16.3 of the Code, the Constitutional Court of Ukraine stated that this norm is strong, therefore its interpretation and application immanently require the application of the norms of the Code, to which there is a direct reference in this prescription. The application of the reference rule in the Code in itself is not a violation of the requirement of legal certainty.

In the opinion of the Constitutional Court of Ukraine, excessive formalism in the requirements for the textual presentation of individual provisions of the Code or other act of civil legislation with the aim, in particular, of narrowing the content and scope of evaluative concepts characteristic of private law or reducing the role of the court in the assessment of facts and the interpretation and application of legal provisions ceases to serve the purpose of ensuring legal certainty and diminishes the importance of justice in a law-based state.

The Constitutional Court of Ukraine came to the conclusion that the contested provisions of the Code meet the requirements of clarity, comprehensibility, and unambiguity of legal norms, are predictable with regard to the legal consequences of their application, and therefore do not contradict Article 8.1 of the Constitution of Ukraine. The Constitutional Court of Ukraine also believes that the disputed provisions of the Code do not violate the supremacy of the Constitution of Ukraine established by Article 8.2 of the Basic Law of Ukraine, because these provisions do not refute the supreme legal force of the Basic Law of Ukraine.

Evaluating the contested provisions of the Code in the present connection with its other provisions in terms of their compliance with Article 41 of the Basic Law of Ukraine, the Constitutional Court of Ukraine stated that Article 13.3 and Article 16.3 of the Code do not limit the constitutional right of the owner to own, use and dispose of his/her property with taking into account the existing limits of the exercise of the right of ownership. When exercising the right of ownership, including by concluding a contract or committing another transaction, a person must take into account that the realisation of freedom of contract as one of the foundations of civil legislation is in direct relationship with the limits of the exercise of civil rights, including property rights, established by the Code and other laws. The establishment by the Code or another law of the limits of the exercise of property rights and the exercise of freedom of contract does not contradict the requirements of the Constitution of Ukraine, with the exception of situations when there is no legitimate purpose for establishing such limits or when legal means that are not presumptive are used. In view of the fact that Articles 13.3 and 16.3 of the Code aim to stimulate participants in civil relations to conscientiously and reasonably exercise their civil rights, the Constitutional Court of Ukraine came to the conclusion that this purpose is legitimate.

Regarding the reasonableness of the prescription of Article 13.3 of the Code, the Constitutional Court of Ukraine stated that the prohibition of preventing actions that can be committed by a participant in civil relations with the intention of harming another person is formulated in Article 13.3 of the Code for the development of the prescription of Article 68.1 of the Basic Law of Ukraine, according to which everyone is obliged not to encroach on the rights and freedoms, honour and dignity of other people. At the same time, the phrase “as well as abuse of rights in other forms”, which is also contained in Article 13.3 of the Code, in the opinion of the Constitutional Court of Ukraine, in its essence is a means of generalised designation of several phenomena at once in order to avoid the need to provide a complete or exclusive list of them.

Article 16.3 of the Code gives the court the opportunity to act at its own discretion (discretionary) in relation to the refusal to satisfy the claim based on the results of the consideration of the case on the merits, therefore this provision does not

contain obstacles to the judicial protection of civil law and the interest of a person even in the event of his/her violation of paragraphs two to five of Article 13 of the Code. For these reasons, the Constitutional Court of Ukraine considers Article 16.3 of the Code to be a reasonable means of achieving such a goal as encouraging participants in civil relations to conscientiously and reasonably exercise their civil rights.

According to the opinion of the Constitutional Court of Ukraine, the equality of property rights subjects before the law established in Article 13.4 of the Constitution of Ukraine is implemented in the Code as a branch law that regulates the exercise by any owner of his/her property rights, other subjective civil rights, taking into account the limits of the exercise of these rights, defined by law, rights and interests of other persons, etc. The disputed provisions of the Code do not allow discrimination of participants in civil relations, since these prescriptions can be applied to any participant in civil relations in the event that he/she violates the limits of the exercise of civil rights, in particular by abusing his/her subjective civil rights.

The Constitutional Court of Ukraine also noted that the right to judicial protection is not absolute, but the state must ensure access to justice in such a way or to such an extent that the very essence of this right is not violated.

The Constitutional Court of Ukraine considers that Articles 13.3 and 16.3 of the Code is not a reason to refuse to initiate court proceedings upon the claim of a person who may violate the limits of the exercise of civil rights. However, the court can apply these prescriptions during the consideration of the merits of the case and refuse to satisfy the claims. Disagreement with the interpretation and application of the provisions of the Code or other laws of Ukraine by courts or other subjects of law enforcement is not sufficient grounds for recognising them as contradicting Article 55.1 of the Constitution of Ukraine.

Evaluating Articles 13.3 and 16.3 of the Code for compliance with the provisions of Article 58.2 of the Basic Law of Ukraine, the Constitutional Court of Ukraine stated that the provisions of the Code do not define the actions of a person as an offense under civil law or as another condition for bringing a person to civil law liability. The disputed provisions of the Code establish a prohibition for participants in civil relations to violate the limits of the exercise of civil rights, and give the court the opportunity to refuse protection of civil rights in the event of a person's violation of the requirements of parts two to five of Article 13 of the Code. That is, these provisions of the Code contain an indication of the legal consequences of a person's actions, which cannot be qualified as conditions, grounds or measures of civil law liability.



The case upon the constitutional complaint of Olena Odintsova on the conformity specific certain provisions of Article 471.2 of the Customs Code with the Constitution of Ukraine (constitutionality)

Judge-Rapporteur: V. Horodovenko

According to the Decision, specific provisions of Article 471.2 of the Customs Code, namely „in case if the direct objects of the offense are goods which movement across the customs border of Ukraine is prohibited or restricted by the legislation of Ukraine - also confiscation of these goods“ do not comply with the Constitution of Ukraine (are unconstitutional).

In delivering the Decision, the Constitutional Court of Ukraine emphasised that, in accordance with the principle of the rule of law, the legislator cannot arbitrarily limit human and citizen's rights and freedoms, granted by the Constitution, when establishing the cases, procedure and scope of confiscation of property.

The right of ownership is not absolute and its exercise has certain constitutional and legal limits. The Constitution of Ukraine allows the confiscation of property as a limitation of the right to property, in particular, which can be applied only by a court decision in the cases, scope and procedure established by law. However, the possibility of such a restriction and its nature should be determined by law not arbitrarily, but in accordance with the Constitution of Ukraine, including the principle of the rule of law established by it and its requirement - the principle of appropriateness (proportionality). Limitation of the right to property in the form of confiscation of property must be conditioned by the protection of the constitutional legal order, human and citizen's rights, freedoms and dignity, the interests of society, the state, be an appropriate and necessary measure to achieve such a legitimate purpose, and also ensure a fair balance between the requirements of public interests and protection property rights of a person, without allowing excessive influence on the addressees, in relation to whom the specified restriction is directed.

Evaluating the provisions of Articles 458 and 465 of the Code, the Constitutional Court of Ukraine emphasised that the confiscation of the specified goods is a type of administrative penalty for the administrative offense envisaged by Article 471 of the Code and is applied to the property of a person that belongs to him/her, including on legal grounds, therefore such confiscation is incompatible with inviolability of the right to private property established by Article 41.4 of the Constitution of Ukraine.

According to the Constitutional Court of Ukraine, the confiscation of goods as a deprivation of ownership under Article 471 of the Code is aimed at ensuring constitutional law and order, public safety, human rights and freedoms and is an appropriate measure, since, like other types of administrative fines established by the

Code for administrative offenses, should contribute to the achievement of the purpose of administrative liability, which is due to the needs of protecting the customs interests of Ukraine and customs security.

The Constitutional Court of Ukraine drew attention to the fact that when limiting the right to property in the interests of society, it is not necessary to take any less burdensome measures for the rights and freedoms of individuals, but those that are capable of achieving a legitimate purpose at the same qualitative level. That is, the legislator is obliged to choose the type of administrative sanction that is less burdensome for the rights and freedoms of a person in a specific case, and must first of all determine an adequate measure of administrative responsibility to achieve its goal, while the courts ensure the individualisation of such liability depending on the circumstances of the case within the limits of the legislatively specified sanction.

The Constitutional Court of Ukraine also emphasised that the uncontrolled movement across the customs border of Ukraine of goods referred to in Article 471 of the Code, primarily those whose movement across the customs border of Ukraine is prohibited by the legislation of Ukraine, in view of their specificity and dangerous characteristics, creates a real threat to public order, health and life, human and citizen's rights and freedoms, environment, economic security of the state, state or public interests and causes the immediate need for the unalternative confiscation of such goods, if they are the direct objects of the administrative offense defined by this article of the Code. Such threats can also be caused by the unaccountable movement across the customs border of Ukraine of currency values in the amount exceeding the equivalent of 10 thousand euros, which belong to goods, the movement of which across the customs border of Ukraine is limited by the legislation of Ukraine, especially in the case when such values are of an illegal nature or will be used in the future in criminal activity. Pursuant to the Constitutional Court of Ukraine, in accordance with Article 471 of the Code, the mandatory confiscation of the specified goods for violation of customs control procedures in simplified customs control zones (corridors) is justified by the need to achieve a deterrent effect against the commission of such offenses, reduce the existing risks of their growth, and is a necessary measure in view of the legitimate purpose of deprivation of property rights.

The Constitutional Court of Ukraine noted that the public benefit of administrative fines for administrative offenses is not in replenishing the state budget, but in ensuring constitutional law and order, social security, and the rights and freedoms of every person. The public benefit from the application of the confiscation of goods under Article 471 of the Code as an administrative penalty is not measured in property equivalent, its essence is to achieve a sustainable effect of protecting the customs interests of Ukraine, customs security due to the implementation by the legislator of adequate measures of administrative liability. However, for the rights and freedoms of a person, the damage from the specified administrative fine, which is defined by Article 471 of the Code, should not be excessive, which is a necessary condition for maintaining a fair balance between the requirements of public interests and the protection of a person's property rights.

The Constitutional Court of Ukraine considers that the contested provisions of Article 471 of the Code do not ensure the achievement of a fair balance between the

requirements of public interests and the protection of a person's property rights and allow the unjustified deprivation of such a right, since, according to these provisions of the Code, currency values in an amount exceeding the equivalent of 10,000 euros, in any case and in full, regardless of the legality of the source of their origin and the purpose of further use, the form of guilt of the person and the negative impact of such confiscation on his/her property situation.

In the opinion of the Constitutional Court of Ukraine, the principle of the rule of law, in particular its requirement, such as the principle of appropriateness, are interconnected fundamental principles of the functioning of the entire legal system of Ukraine, including the normative establishment of administrative liability by the legislator. Therefore, specific sanctions for administrative offenses must be fair and correspond to the principle of appropriateness, that is, the legislator must determine administrative sanctions taking into account their justification and need to achieve a legitimate purpose, taking into account the requirements of the adequacy of the consequences caused by such sanctions (including for a person, to which they apply), the damage that occurs as a result of an administrative offense. The issue of choosing the type of administrative sanction in accordance with paragraph 22 of Article 92.1 of the Constitution of Ukraine is decided exclusively by the legislator, taking into account the provisions of the Constitution of Ukraine, in particular the principle of the rule of law.

Having analysed the contested provisions of Article 471 of the Code, the Constitutional Court of Ukraine stated that these provisions have a criminal law nature both in terms of their punitive and deterrent purpose, and in terms of the severity of the additional mandatory administrative penalty determined by them in the form of confiscation of certain goods, therefore the imposition of such penalty should be carried out taking into account the principles and guarantees inherent in criminal proceedings. The Constitutional Court of Ukraine also emphasised that fair sentencing in criminal proceedings, taking into account the intensity and danger of its negative impact on the fundamental rights and freedoms of a person, is a mandatory condition for protecting a person from arbitrariness in a state where the principle of the rule of law operates.

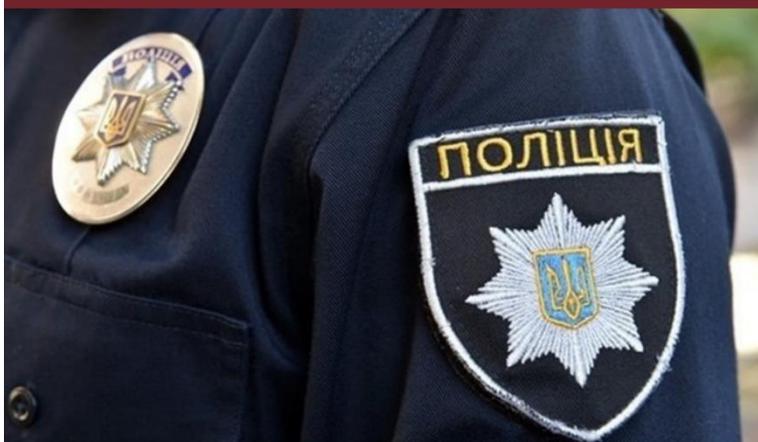
The Constitutional Court of Ukraine believes that in order to ensure the justice of the punishment in criminal proceedings, its proportionality to the gravity of the crime, the court, in accordance with the Criminal Code of Ukraine, is empowered with discretion regarding the forms of implementation of criminal liability. According to the provisions of Article 69 of the Criminal Code of Ukraine, in the presence of mitigating circumstances, the court is granted the opportunity to impose a milder punishment than provided by law, including the court may not impose an additional punishment which is provided for in the sanction of the article (sanctions of part of the article) of the Special Part of this Code as mandatory, except in cases of punishment for the commission of a criminal offense, for which the main punishment is provided in the form of a fine in the amount of more than three thousand tax-free minimum incomes of citizens. In addition, from the analysis of the provisions of Articles 52 and 59 of the Criminal Code of Ukraine, it can be seen that confiscation of property is an additional

punishment; it consists in the forced, free of charge seizure of all or part of the property owned by the convicted person into the ownership of the state; is established for serious and especially serious self-interested crimes, as well as for crimes against the foundations of national security of Ukraine and public safety, regardless of their severity, and may be imposed only in cases specifically provided for in the Special Part of this Code.

The Constitutional Court of Ukraine also stressed that even when confiscation of property is established along with the most severe main punishment - imprisonment, such additional mandatory punishment is the discretion of the court in accordance with the provisions of Article 69 of this Code. Instead, the disputed provisions of Article 471 of the Code establish the mandatory confiscation in any case and in full of currency values in an amount exceeding the equivalent of 10 thousand euros, as goods, the movement of which across the customs border of Ukraine is limited by the legislation of Ukraine, in the event that such goods are direct objects of the offense. The Code of Ukraine on Administrative Offenses does not define procedural mechanisms that would allow courts to reduce the degree of administrative liability defined by Article 471 of the Code depending on the mitigating circumstances of the case and would allow such confiscation to be applied partially or not at all. According to Article 22 of the Code of Ukraine on Administrative Offenses, exemption from administrative liability is possible only if the administrative offense committed is minor. Thus, the application of the confiscation of the specified goods under the contested provisions of Article 471 of the Code in cases of administrative offenses is not carried out in accordance with all the principles and guarantees of criminal proceedings, in particular, constitutional guarantees in criminal proceedings to ensure the fairness of the imposition of punishment are not taken into account, which indicates the excessive and arbitrary nature of such administrative penalty.

The Constitutional Court of Ukraine concluded that certain provisions of Article 471.2 of the Code, by which for violation of the customs control procedure in the zones (corridors) of simplified customs control, mandatory confiscation in any case and in full of currency values in the amount exceeding the equivalent of 10 thousand euros, as goods, the movement of which across the customs border of Ukraine is limited by the legislation of Ukraine, in the event that such goods are the direct objects of an offense, do not ensure a fair balance between the requirements of public interests and the protection of the property rights of a person, and are not consistent with the principle of the rule of law.

DECISION No. 4-r (II)/2021 of July 21, 2021



The case upon the constitutional complaint of Bohdan Bivalkevych concerning the conformity of paragraph 8 of Section XI “Final and Transitional Provisions” of the Law of Ukraine “On the National Police” with the Constitution (constitutionality)

Judge-Rapporteur: O.Pervomaiskyi

The Constitutional Court of Ukraine declared the paragraph 8 of Section XI “Final and Transitional Provisions” of the Law of Ukraine “On the National Police” dated July 2, 2015 No. 580-VIII [Law], according to which “from the date of publication of this Law, all police officers (ordinary and senior members of internal affairs bodies), as well as other employees of the Ministry of Internal Affairs of Ukraine, its territorial bodies, agencies and institutions, are considered to have been warned in a specified manner about possible future dismissal due to staff reductions”, as such that do not comply with the Constitution of Ukraine (are unconstitutional).

The Decision of the Constitutional Court does not apply to legal relations that have arisen since the entry into force of paragraph 8 of Section XI “Final and Transitional Provisions” of the Law “On National Police” No. 580-VIII of July 2, 2015 and continue to exist after the adoption of this Decision by the Constitutional Court.

In delivering the Decision, the Constitutional Court of Ukraine noted that an integral element of the implementation of the constitutional right to work is the state's provision of adequate guarantees against illegal dismissal. Dismissal can be considered to be in accordance with the provisions of Article 43.6 of the Constitution of Ukraine, if it is carried out on the basis of a law, the norms of which meet the requirements of the rule of law, the need for dismissal is aimed at achieving a legitimate purpose, and the measures applied during the dismissal of a person are reasonable (proportional).

The Constitutional Court of Ukraine concluded that the purpose of adopting the Law is legitimate and due to the public interest in reforming the system of law enforcement agencies in terms of the creation of such an executive authority as the police.

The Constitutional Court of Ukraine stressed that according to the constant understanding of the principle of the rule of law, one of its components is legal certainty, which requires, among other things, the clarity and comprehensibility of legal norms, in particular in terms of the predictability of their content and legal relations that will be regulated by these norms; the availability of a legal act to the participants of social relations for perusal does not guarantee the availability of its content, if the prescription of such an act is poorly expressed, in particular, unclear or contradictory.

Having examined paragraph 8 of Section XI “Final and Transitional Provisions” of the Law for compliance with the requirement of legal certainty, the Constitutional Court of Ukraine, first of all, noted that this provision of the Law is formulated as a warning about the immediate dismissal of all police officers, in contrast to the provision of Article 49² of the Labour Code of Ukraine, according to which “employees are personally informed about the subsequent dismissal no later than two months in

advance” (paragraph one). That is, the provision of Article 49².1 of the Code is only a basis for the future personal notification of the employee about his subsequent release (dismissal), while paragraph 8 of Section XI “Final and Transitional Provisions” of the Law no longer requires a personal notification of the employee about the subsequent dismissal.

The Constitutional Court of Ukraine believes that the use of the words “possible subsequent dismissal” in paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law has led to a contradiction in its content. This conclusion is due to the fact that the subject of the right to constitutional complaint from the moment the disputed provision of the Law entered into force (August 7, 2015) could consider that this provision is either an improper notification of his future dismissal, or, given the use of words in it, it is “possible” and “subsequent” that the dismissal may not be applied to him in the future, and he expects to continue the employment relationship.

In the opinion of the Constitutional Court of Ukraine, the contested provision of the Law in the systemic relationship with paragraphs 9, 10 of Chapter XI “Final and Transitional Provisions” of the Law can be interpreted and applied not only as a notification of the possible subsequent dismissal of B.Bivalkevych, but at the same time as a proposal for possible employment in the police based on consent to accept and further service in the police, successful participation in the relevant competition and fulfilment of other conditions specified in the provisions of the Law. Therefore, the subject of the right to constitutional complaint, the court or other subject of law enforcement did not have the opportunity to clearly understand the content, foresee the legal consequences of the operation of paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law and the behaviour of a participant in social relations regarding the further implementation of the right to work. Such legislative regulation contradicts the constitutional principle of the rule of law in the aspect of compliance with the requirement of legal certainty and, as a result, does not provide the protection against illegal dismissal guaranteed by the Basic Law of Ukraine.

The Constitutional Court of Ukraine also noted that in the disputed provision of the Law, the Verkhovna Rada of Ukraine defined one of the components of the special procedure for the dismissal of all police officers - a notification about dismissal in the manner of publication of the Law. This method of notification of B.Bivalkevych and other police officers about their subsequent dismissal is definitely different from the method of notification about dismissal, defined by the Code regarding other employees and the Law regarding police officers.

The Constitutional Court of Ukraine believes that paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law has the characteristics of an act of law enforcement in relations involving B.Bivalkevych and other police officers. However, the Verkhovna Rada of Ukraine is not a subject of law enforcement and is not authorized to adopt acts of this type, except for cases expressly defined by the Constitution of Ukraine. That is, the Verkhovna Rada of Ukraine cannot dismiss an individual employee or certain categories of employees and notify them of a possible subsequent dismissal by passing laws that are normative acts. Dismissal of a person is possible based not on the law, but only on the basis of an individual act of law, which the Verkhovna Rada of Ukraine does not have the authority to adopt. The cases when

the Verkhovna Rada of Ukraine is authorised to dismiss and appoint individuals in the manner of adopting individual acts of law are determined by the provisions of the Basic Law of Ukraine. The Constitutional Court of Ukraine concluded that paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law was adopted by the Verkhovna Rada of Ukraine outside of its constitutional powers.

Analysing the appropriateness (proportionality) of interference with the right to work of B.Bivalkevych and compliance with the guarantees of protection against illegal dismissal granted to him by the Basic Law of Ukraine, the Constitutional Court of Ukraine took into account that the content of the constitutional guarantee of protection against illegal dismissal also consists in the fact that the legislative regulation of these relations must comply with the requirements of the Constitution of Ukraine regarding the state's creation of conditions for the full exercise of the right to work by citizens in cases where the dismissal of an employee occurs against his wishes.

The Constitutional Court of Ukraine considers that the legal institutes defined in the Code and other acts of the legislation of Ukraine should provide a reliable sectoral regulatory basis for the effective implementation of the duties of the state, established by Article 43.2 of the Constitution of Ukraine, in particular, to create conditions for the full exercise of the right to work by citizens.

The Constitutional Court of Ukraine also took into account that B.Bivalkevych was in the service of the internal affairs bodies of Ukraine since 1991, his years of service on the day of his dismissal from the office of deputy head of the department of investigation of particularly important criminal proceedings - head of the 1st department of the Main Investigative Department of the Ministry of Internal Affairs of Ukraine amounted to more than 26 years. In fact, the subject of the right to constitutional complaint had no other professional experience than the experience gained during his service in the internal affairs bodies of Ukraine, and therefore the contested provision of the Law contains, in the opinion of the Constitutional Court of Ukraine, signs of significant interference in the private and professional life of B.Bivalkevych.

The Constitutional Court of Ukraine considers that the interference with the rights of the subject of the right to constitutional complaint by the state in the process of liquidation of the militia and creation of a new body of law and order - the police - should have been reasonable (proportional) and ensure the possibility of continuation by B.Bivalkevych of a professional career in the police or to establish dignified and predictable in terms of content and consequences conditions for his dismissal from service.

The Constitutional Court of Ukraine concluded that paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law in relationship with other provisions of the Law does not contain reasonable (proportional) means of interference with the rights of the subject of the right to constitutional complaint and does not take into account the requirements of a number of constitutional prescriptions, namely regarding the content and direction of state activity, which are determined by human rights and freedoms and their guarantees (the first sentence of Article 3.2 of the Constitution of Ukraine); the main duty of the state to assert and ensure human rights and freedoms (the third sentence of Article 3.2 of the Constitution of Ukraine); duties of the state to

create conditions for citizens to fully exercise their right to work (Article 43.2 of the Constitution of Ukraine).

The Constitutional Court of Ukraine decided not to extend the effect of the Decision to legal relations that arose from the moment of entry into force of paragraph 8 of Chapter XI “Final and Transitional Provisions” of the Law and continue to exist after the day of adoption of the Decision by the Constitutional Court of Ukraine, taking into account the need to maintain a balance of socially significant interests in supporting the legitimacy of the creation of such an executive power body as the police, and the private interests of the subject of the right to a constitutional complaint. Choosing a different approach in this case, according to the Constitutional Court of Ukraine, would lead to a review of the legal relationship regarding the dismissal of not only B.Bivalkevych, but also other police officers and the legal relationship regarding the recruitment of police officers, which would violate the principle of supremacy rights and questioned the legitimacy of the creation of the police.

In order to protect the rights and interests of the subject of the right to constitutional complaint, the Constitutional Court considers that B. Bivalkevych has the right guaranteed by the Basic Law to compensation for material and moral damage suffered as a result of the application of paragraph 8 of Section XI “Final and Transitional Provisions” of Law No. 580, which in accordance with this Decision violates the provisions of the Constitution. The state's evasion of such compensation undermines trust in the state and public authorities and is contrary to the Basic Law.

DECISION No. 5-r(II)/2021 of July 21, 2021



The case upon constitutional complaints of Anatolii Kremenchutskyi and Vladyslav Pavlyk concerning the conformity of the provision of Article 294.10 of the Code of Ukraine on Administrative Offenses with the Constitution of Ukraine (constitutionality)

Judge-Rapporteur: S. Holovaty

The Constitutional Court of Ukraine declared the provision of Article 294.10 of the Code of Ukraine on Administrative Offenses, whereby „the decision of the appellate court enters into force immediately after its adoption, is final and may not be appealed”, to be in conformity with the Constitution of Ukraine (is constitutional).

In delivering the Decision, the Constitutional Court of Ukraine proceeded from the fact that the substantial content of the right to judicial protection, which is established by Article 55.1 of the Constitution of Ukraine, should be determined both in connection with the basic principles of judicial proceedings, determined by the provisions of Article 129.2 of the Constitution of Ukraine, and taking into account the content of the right to a fair trial, defined in Article 6 of the 1950 Convention for the

Protection of Human Rights and Fundamental Freedoms and interpreted by the European Court of Human Rights.

The Constitutional Court of Ukraine noted that under the current constitutional legal order, which is defined by the provisions of Article 92.1.14, Article 129.2.8 of the Constitution of Ukraine, the right to appellate review of each case is ensured at the level of the law, and the right to cassation appeal of the court decision is ensured only in those cases defined by the legislator.

The Constitutional Court of Ukraine concluded that, taking into account international acts (the Convention and the International Covenant on Civil and Political Rights of 1966), which are part of national legislation, and therefore mandatory, and the practice of their application, the establishment of cassation courts and establishing in national law the right to cassation appeal of the court's decision are not recognised as mandatory. The resolution of these issues belongs to the sphere of internal regulation of each state, which has the right to regulate it at its own discretion, guided by the doctrine of “a margin of appreciation”.

The legislator, regulating in Article 294 of the Code the issue of an instance review/appeal of a judge's decision in cases of administrative offenses, guided by the provisions of Article 92.1.14, Article 129.2.8 of the Constitution of Ukraine and the freedom of discretion within the framework of the “a wide margin of appreciation”, ensured the right for appellate review of cases on administrative offenses, but did not establish the right to cassation appeal of the court decision in these cases.

Under such normative regulation, the subjects of the right to constitutional complaint, found guilty of committing administrative offenses, were guaranteed the right to a trial of their cases by a judge of the court of first instance and to a full review of these cases by an appellate court. Accordingly, in the cases of A.Kremenchutskyi and V.Pavlyk there was no violation of the right to judicial protection in the aspect of providing an instant review of their cases.

The Constitutional Court of Ukraine stated that the application of the provision of Article 294.10 of the Code does not lead to a violation of such a principle of judicial procedure as ensuring in the cases defined by law the right to cassation appeal of a court decision, the right to judicial protection, and therefore, this provision is consistent with the principle of the rule of law.

The Constitutional Court of Ukraine also noted that the provision of Article 294.10 of the Code does not regulate any issues related to the implementation and provision of the right to work guaranteed by Article 43 of the Constitution of Ukraine, but concerns the procedural issue of the administration of justice - the scope of the right to judicial protection in cases of administrative offense. Therefore, Article 43 of the Constitution of Ukraine is not applicable for the purposes of deliberation of this case.

The Constitutional Court of Ukraine emphasised that the European Court of Human Rights, deliberating cases against Ukraine, declared the administrative offenses defined in the Code as criminal based on both the nature (character) of the offense and the nature and severity (degree of severity) of the administrative penalty. The latter primarily concerns significant fines and administrative arrest.

The Constitutional Court of Ukraine believes that, firstly, the legislation of Ukraine lacks a distinction between criminal and administrative offenses based on clear criteria, and secondly, the imposition of certain administrative penalties for committing administrative offenses, in particular large fines, administrative arrest, has not only a preventive purpose, but also a punitive one, which is characteristic of a criminal punishment, not an administrative penalty, and drew the legislator's attention to the need to distinguish at the legislative level between crimes, administrative and disciplinary offenses according to clear criteria, since this directly follows from the provision of Article 92.1.22 of the Constitution of Ukraine and commitments of Ukraine as a state party to the Convention.

The Constitutional Court of Ukraine held that the problem of the current legislation on administrative offenses does not lie in the level of procedural limitation of the right to cassation appeal against the decisions of the court of appeal in cases of administrative offenses (since by its nature such a limitation is generally permissible and does not cause a violation of the right to judicial protection), and in the regulation of a large number of offenses in the legislation on administrative offenses, which by their nature or character and degree of severity of punishment belong to criminal offenses.

According to the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine should systematically and urgently resolve the issue. The parliament should ensure the legislative regulation of this issue in such a way that administrative offenses are distinguished from criminal ones on the basis of clear criteria, in particular, given the difference in the nature of administrative and criminal offenses, the nature and severity of the sanction that can be applied to the offender for committing an administrative or a criminal offense.

DECISION No. 6-r(II)/2021 dated September 16, 2021



The case upon the constitutional complaints of Dmytro Krupko on the compliance of Articles 81.1 and 82.1 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality), Volodymyr Kostin and Oleksandr Melnychenko on the compliance of Article 82.1 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) and upon the constitutional complaint of Viktor Hohin on the compliance of Article 81.1 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) (the case regarding review of the sentence of a person sentenced to life imprisonment)

**Judges-Rapporteurs: S.Holovaty,
V.Horodovenko**

The Constitutional Court of Ukraine declared Articles 81.1 and 82.1 of the Criminal Code of Ukraine to be as such that do not comply with the Constitution of Ukraine (are unconstitutional) due to the fact that they make it impossible to apply them to persons sentenced to life imprisonment and obliged the Verkhovna Rada of Ukraine to immediately bring the normative regulation established by Articles 81 and 82 of the Criminal Code into compliance with the Constitution of Ukraine and this Decision.

In delivering the Decision, the Constitutional Court of Ukraine proceeded from the fact that human dignity as the source of all human rights and freedoms and their basis is one of the fundamental values of the Ukrainian constitutional system. It follows from Article 3 of the Constitution of Ukraine that the duty of the state to ensure safeguard and protection of human dignity. Such an obligation is imposed on all subjects of public authority. The Verkhovna Rada of Ukraine, passing laws, must guarantee proper protection and realisation of human rights and freedoms, which is one of the conditions for ensuring human dignity as a natural value. In turn, the courts must interpret legal norms in such a way that during their application it does not harm human dignity.

In the aspect of deliberation of this case, the Constitutional Court of Ukraine noted that the right to respect for human dignity is unconditional; in international public law, this is expressed through the universally recognised formula - *jus cogens* (imperative norm), which categorically prohibits all forms of inhuman or degrading treatment or punishment. Therefore, the provisions of Articles 3, 28.1 and 28.2 of the Constitution of Ukraine constitute an imperative for the state to provide legal guarantees to possess the dignity inherent in every person from birth. This imperative extends to the attitude of the state to persons sentenced to restriction or deprivation of liberty. In accordance with Article 63.3 of the Constitution of Ukraine, convicted persons enjoy all human and citizen's rights, with the exception of restrictions defined by law and established by a court verdict. Although the conviction of a person who has committed an illegal act to serving a sentence in the form of restriction or deprivation of liberty will inevitably have the effect of limiting his/her right to freedom and inviolability, this does not mean that the state is allowed to encroach on, limit or deny human dignity.

The Constitutional Court of Ukraine also assumed that the consequence of Ukraine joining the European legal order in the matter of human rights through the ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 is that the introduction and application of criminal penalties in the national legal order cannot be carried out only according to national criminal justice criteria.

In this matter, it is the duty of the state to be guided also by international standards in the area of human rights, in particular, those related to the human dignity of persons to whom punishment is applied. One of these standards is the principle that embodies the idea: "All persons have human dignity, which must be protected. This applies to persons who are being punished, even those who have committed the most heinous crimes. Although punishment inevitably limits the human rights of those who have suffered it, it cannot deprive them of their fundamental dignity. There is a close connection between the protection of the human dignity of all people and the prohibition of certain types of punishment, variously defined as "cruel and exceptional" or "inhuman and degrading".

The Constitutional Court of Ukraine believes that the Code's selection of life imprisonment as the exclusive and most severe type of punishment is consistent with the principles of proportionality of the gravity of the crime and the punishment for its

commission, justice in criminal law. However, in order to implement the above-mentioned principles in criminal law and within the framework of the functioning of the institutions of parole from serving a sentence and/or replacement of the unserved part of the sentence, the procedure for the early release of convicts from serving a sentence of life imprisonment should be set out in a more lenient manner, which would take into account the legal nature of this type of punishment and did not allow it to be equated with other types of criminal punishment.

The Constitutional Court of Ukraine also emphasised that the provisions of the criminal law of Ukraine, regulating the procedure and conditions for the execution and serving of criminal punishments, indicate that its purpose is to protect the interests of the individual, society and the state by creating conditions for the correction and resocialization of convicts, prevention of committing new criminal offenses both by convicted persons and by other persons, as well as prevention of torture and inhuman or degrading treatment of convicted persons (Articles 1, 2 of the Criminal Executive Code of Ukraine).

Current Ukrainian legislation defines “correction of a convicted person” as “a process of positive changes that occur in his/her personality and create his/her readiness for self-directed, obedient behaviour”, and “resocialisation” - as “a conscious restoration of the convicted person in the social status of a full member of society; returning him/her to an independent, generally accepted social and normative life in society”; at the same time, the ultimate condition for the convict's resocialisation is his/her “correction” (Article 6 of the Criminal Executive Code of Ukraine).

In the event that the court imposes punishment by deprivation of liberty of the guilty person, in particular, sentencing him/her to life imprisonment, the state has a positive duty to contribute to the preparation of such a person for his/her possible reintegration into society (social rehabilitation), based on what the state always faces the requirement to provide everyone with means that would allow them to lead a full-fledged lifestyle in a free society. In the aspect of deliberation of this case, there are reasons to state that correction and social rehabilitation – as constituent elements of the goal of any criminal punishment – is the right of a person sentenced to life imprisonment.

A person's right to reformation and social rehabilitation is guaranteed by Article 10.3 of the International Covenant on Civil and Political Rights of 1966 [Covenant], according to which states undertook that “the penitentiary system shall include such treatment of “prisoners, for whom the inevitable goal will be their correction and social rehabilitation”.

The case-law of the European Court of Human Rights formulated the general principles of applying the penalty of life imprisonment in national legal systems in terms of the requirement of social rehabilitation and reintegration into society.

In the context of the Ukrainian constitutional legal order, the prisoner's interest in social rehabilitation (resocialisation) stems from Article 23 of the Constitution of Ukraine, according to which every person is guaranteed the right to “free development of his/her personality” in a society “in which the free and comprehensive development of his/her personality is ensured”, in conjunction with Article 3 of the Constitution of Ukraine, which defines human dignity as the highest value. This approach makes it

possible to talk about the right of a person to develop his/her personality freely in combination with the protection of human dignity.

As evidenced by the case-law of the European Court of Human Rights, there is an imperative requirement to review the sentence of life imprisonment, which is used as a tool to protect human dignity in view of the connection between the hope of release and human dignity. In the context of the European legal order in the field of human rights, “the very concept of release is combined with the idea that human dignity is related to the resocialisation of a person imprisoned for life.” It follows that release means that lifers should have the prospect of returning to society if they have been resocialised and are no longer considered a threat to society, and such return occurs when they are still capable of being active members of society.” [Dirk van Zyl Smith and Catherine Appleton. *Life Imprisonment: A Global Human Rights Analysis*. Cambridge (Massachusetts): Harvard University Press, 2019. P. 236].

In the Ukrainian constitutional context, the connection between hope for release and human dignity is contained in the concept of “everyone's right to free development” (Article 23 of the Constitution of Ukraine).

It follows from the case-law of the European Court of Human Rights that there is a standard regarding the application by European countries of life imprisonment with an absolute requirement to review this type of punishment and regarding the criteria and conditions of review.

Examining the issue of whether the provisions of the Code provide an opportunity to exempt persons sentenced to life imprisonment and/or to exempt them from serving such a sentence, the Constitutional Court of Ukraine concluded that the Code does not provide for provisions that would determine the procedure for the release of such persons. The direct possibility of their release is defined in Article 87.2 of the Code, according to which an act of pardon can be applied to replace a convicted person's sentence of life imprisonment with imprisonment for a term of at least twenty-five years.

According to the Constitutional Court of Ukraine, the procedure for release from serving a sentence of life imprisonment as a result of pardon cannot be considered as containing a real prospect of release in the sense of the principles formulated by the European Court of Human Rights in its case law regarding the interpretation of Article 3 of the Convention.

In view of the establishment by the European Court of Human Rights of Ukraine's violation of Article 3 of the Convention on the basis that the punishment in the form of life imprisonment is a punishment without the prospect of release, and taking into account the fact that Article 28.2 of the Constitution of Ukraine is identical to Article 3 of the Convention, The Constitutional Court of Ukraine considers that the punishment established by the Code in the form of life imprisonment as a punishment without the prospect of release is incompatible with the requirements of the Constitution of Ukraine.

The prospect of release from life imprisonment is also required by the Covenant, Article 7 of which prohibits torture, cruel, inhuman or degrading treatment or punishment.

Based on the results of visits to Ukraine in 2016 and 2017, the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment recommended that Ukraine create a realistic prospect of release from life imprisonment: "...The Committee is forced to recall the basic principle, that in order to reduce the harmful effects of incarceration and promote the reintegration of prisoners while ensuring the safety of the community at large, the law should provide for a realistic prospect of parole for all convicts, including those sentenced to life imprisonment. So far, this has still not been done" (Report of 2016, [CPT/Inf (2017) 15], paragraph 40); "The Committee once again calls on the Ukrainian authorities to amend the legislation in order to ensure the possibility of conditional (early) release for all those sentenced to life imprisonment, subject to an assessment of the threat they pose to society, based on an individual risk assessment" (Report of 2017, [CPT/Inf (2018) 41], paragraph 81).

Examining the issue of the possibility of applying to persons serving a sentence of life imprisonment, institutions of conditional early release from serving the sentence and/or replacing the unserved part of the sentence with a milder punishment, the Constitutional Court of Ukraine assumed that the concept of "life imprisonment" means a term of imprisonment that lasts until the end of life. The term of serving a sentence in the form of life imprisonment covers the period of time between two events in time: the first is the moment when the sentence becomes legal, the second is the one that will inevitably come sometime - death. Therefore, it is impossible to determine a certain part of the sentence of a person sentenced to life imprisonment for the purpose of applying Articles 81 and 82 of the Code to him/her. Articles 81, 82 of the Code do not contain a special and appropriate procedure for early release from serving a sentence of life imprisonment, according to which a person sentenced to this type of punishment could be released early from serving it, taking into account the principles of proportionality of the gravity of the crime and punishment for his/her actions and demands of justice in criminal law. In addition, the extension of Articles 81 and 82 of the Code to persons sentenced to life imprisonment, without defining for them a special and appropriate procedure for their early release from serving this sentence, will cause legal uncertainty in the enforcement of the said articles. As a result, it is impossible to achieve the purpose of punishment, as defined in Article 50.2 of the Code, namely its constituent elements, such as the correction of a person sentenced to life imprisonment and the resocialisation of such a person. The above also testifies to the failure of the state to fulfill its positive obligation to contribute to the preparation of a person sentenced to life imprisonment for his/her possible resocialisation/reintegration into society. Therefore, a person sentenced to life imprisonment is deprived of the opportunity to exercise the right to prove his/her correction and the right to resocialization, and accordingly, the opportunity to review his/her punishment in order to assess the process of changes that have occurred in the personality of such a convicted person and the degree of his/her danger to society as a prerequisite for his/her return to society. The need for such revision stems from Article 65.2 of the Code, according to which the person who committed the crime must be given a punishment that is necessary and sufficient for his/her correction and prevention of new crimes.

Inapplicability to persons serving a sentence of life imprisonment, the institution of parole from serving such a sentence, which is regulated by Article 81 of the Code, and/or the institution of replacing the unserved part of the sentence with a milder one, as provided for in Article 82 of the Code, in systematic connection with other provisions of the Code, which regulate the issue of life imprisonment, indicates the absence of any prospect of release of such persons. In the context of Ukrainian legislation, such a punishment as life imprisonment has the consequence of lifelong exclusion of a person from society, which has a purely punitive function.

The Constitutional Court of Ukraine considers that life imprisonment as a type of criminal punishment does not contradict the provisions of Articles 3.1, 23, and 28.2 of the Constitution of Ukraine, if the person sentenced to this type of punishment is guaranteed at the legislative level the right to early release from serving such punishment and/or replacing the unserved part of the sentence with a milder punishment.

At the same time, life imprisonment of a person without the possibility of further release means equating the term of life imprisonment with deprivation of liberty until the end of a person's natural life, and therefore denies not only the purpose of punishment, but also the very essence of human dignity, calls into question its absolute nature and constitutes a violation positive duty of the state to protect human dignity.

The Constitutional Court of Ukraine also noted that in order to implement Articles 3, 23, and 28 of the Constitution of Ukraine and to bring the Code into compliance with the Constitution of Ukraine, as well as in view of the international obligations that Ukraine assumed by becoming a member of the Council of Europe, it is the duty of the Verkhovna Rada of Ukraine to legislatively ensure a realistic prospect of releasing persons sentenced to life imprisonment from further serving such a sentence by standardizing the procedure for replacing life imprisonment with a milder punishment or parole.

At the same time, it should be taken into account that the replacement of the unserved part of the sentence in the form of life imprisonment with a milder punishment should not be a prerequisite for parole. In addition, the Constitutional Court of Ukraine considers that a person sentenced to life imprisonment should also, if necessary, be provided with free legal assistance for the purpose of properly preparing the necessary documents and protecting his interests during consideration of the issue of parole and/or replacement of the unserved part of the sentence with a milder sentence through judicial review.



The case upon the constitutional complaint of the Private Joint Stock Company “Chernihivoblbud” on the compliance of the provisions of subparagraph “b” of Article 14.3.1 of the Law of Ukraine “On Ensuring the Realisation of Housing Rights of Dormitory Residents” with the Constitution of Ukraine (constitutionality)

Judge-Rapporteur: V.Moisyk

The Constitutional Court declared the provision of subparagraph “b” of Article 14.3.1 of the Law “On Ensuring the Realisation of Housing Rights of Dormitory Residents” of September 4, 2008 No. 500–VI as amended which stipulates that the dormitory included in the authorised capital of the company is transferred to the ownership of the territorial hromada without the consent of the dormitory owner by court decision, to be as such that does not comply with the Constitution of Ukraine (is unconstitutional).

In delivering the Decision, the Constitutional Court of Ukraine stressed that the condition of full compensation to the owner of the value of the private property in the event of its forced alienation for reasons of public necessity is directly established by Article 41.5 of the Basic Law of Ukraine, and therefore this issue is outside the discretionary powers of the Verkhovna Rada of Ukraine; the legislator, within the limits of its competence, has only to ensure the implementation of the condition established by the specified provision of the Constitution of Ukraine.

The Constitutional Court of Ukraine noted that both at the constitutional level and at the level of international treaties, which are part of the national legislation of Ukraine, in the event that the Verkhovna Rada of Ukraine consents to their binding nature (Article 9.1 of the Constitution of Ukraine), the possibility of limiting the right to property is established taking into account the interests of society, in particular, in view of the need to ensure the protection of other constitutional rights of citizens, in particular, the right to housing.

According to the Law, citizens can exercise their constitutional right to housing by privatising residential premises in dormitories only under the condition that the latter are communally owned (owned by the territorial hromada).

The Constitutional Court of Ukraine drew attention to the change in the approach of the legislator to the regulation of the methods of transfer to the ownership of territorial hromadas of dormitories, which are included in the authorised capital of companies, and believes that the legislator, changing the wording of Article 14 of the Law, consistently limited the rights of the owners of dormitories, which are included in the authorised capital of companies, when transferring such dormitories to the ownership of territorial hromadas: from transfer exclusively on a compensatory basis to the introduction of the possibility of transferring a dormitory on a completely non-compensatory basis by a court decision without the consent of the owner of the dormitory. The introduced changes could be justified in the case of ensuring a fair balance between the interests of society (ensuring the realisation of the constitutional

right to housing by residents of dormitories) and the requirements of the Basic Law of Ukraine regarding the protection of property rights (the rights of the owners of such dormitories).

Examining the issue of the protection of the right to property, the Constitutional Court of Ukraine noted that according to the case-law of the European Court of Human Rights, in the event of unjustified interference by the state in the right of a person to peacefully own his/her property, the state has an obligation to compensate such a person for the damage caused to him/her; payment of compensation for property is an essential factor in assessing the existence of a fair balance between the interests of society and private individuals; such compensation must be reasonably related to the value of the property at the time of its alienation. Instead, in accordance with Article 14.4 of the Law, the amount of compensation for the cost of dormitories, which are transferred in accordance with the Law to the ownership of territorial hromadas on a partially compensatory or compensatory basis, is calculated according to the value of the dormitories, at which they were included in the authorised capital of the companies. The above gave the Constitutional Court of Ukraine grounds for the conclusion that the method established by the Verkhovna Rada of Ukraine for implementing the constitutional right to housing of dormitory residents and the state's efforts to minimise certain financial costs for compensation to dormitory owners at the level of national legislation led to a disproportion between the socially significant purpose (ensuring the housing rights of dormitory residents) and legal mechanisms that were applied to achieve it.

The Constitutional Court of Ukraine also concluded that a fair balance must be observed between the guarantee of protection of the right to private property, in particular against forced alienation without observing the condition of prior and full compensation of its value (Article 41.5 of the Constitution of Ukraine), and constitutional right of persons living in dormitories, to a sufficient standard of living for themselves and their families, which includes sufficient food, clothing and housing (Article 48 of the Constitution of Ukraine).

Such a fair balance follows from the requirements of Article 47 of the Basic Law of Ukraine: “everyone has the right to housing. The state creates the conditions under which every citizen will be able to build housing, buy it as a property or rent it” (paragraph one); “Citizens in need of social protection are provided with housing by the state and local self-government bodies free of charge or for a fee that is affordable to them in accordance with the law” (paragraph two); “no one can be forcibly deprived of housing other than on the basis of the law by a court decision” (paragraph three).

The legislator is obliged to take into account the fact that a person and decent conditions of his/her life are the purpose and core of the constitutional system of Ukraine, recognised as the highest value (preamble, Article 3.1 of the Constitution of Ukraine), and cannot resort to such legislative regulation, which would enable forced deprivation of housing for persons solely due to a change in the owner of the dormitory, which could put persons and their family members in an exceptionally difficult social situation, incompatible with their human dignity - one of the fundamental values of the constitutional system of Ukraine.

Dissenting opinion of judge G. Yurovska was supplemented to the Decision. The Judge provides for her own considerations regarding the legal positions specified in the Decision.

2.2. CASES PENDING BEFORE THE CONSTITUTIONAL COURT OF UKRAINE AS OF DECEMBER 31, 2021

CASES UPON CONSTITUTIONAL PETITIONS

In 2021, the Constitutional Court of Ukraine deliberated:

– **the case upon four constitutional petitions (deliberated in joint proceedings):**

1) of the Supreme Court of Ukraine regarding the conformity of paragraph 6 of part one, paragraphs 2, 13 of part 2, and part 3 of Article 3 of the Law of Ukraine “On Government Cleansing” dated September 16, 2014 No. 1682-VII with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition believes that certain provisions of the Law do not correspond to Articles 8.1, 61, 126.1 and 126.5.1 of the Constitution of Ukraine, as they contradict the principle of legal certainty as a component of the principle of the rule of law and establish a legal liability of judges for the same offense;

2) of 47 People's Deputies of Ukraine regarding compliance of parts three, six of Article 1, parts 1, 2, 3, 4, 8 of Article 3, paragraph 2 of part 5 of Article 5, paragraph 2 of the final and transitional provisions of the Law of Ukraine “On Government Cleansing” dated September 16, 2014 No. 1682-VII with the Constitution of Ukraine (constitutionality).

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

3) of the Supreme Court of Ukraine regarding compliance of Article 1.3, paragraphs 7, 8, 9 of part 1, paragraph 4 of part 2 of Article 3, paragraph 2 of the final and transitional provisions of the Law of Ukraine “On Government Cleansing” dated September 16, 2014 No. 1682–VII with the Constitution of Ukraine (constitutionality).

The petitioner claims that the disputed provisions of the Law do not correspond to the provisions of Articles 22.3, 38, 58, 61.2, 62.1, and 64.1 of the Constitution of Ukraine, since they recognise as collectively guilty without ensuring an individual approach to liability, violate the principle of presumption of innocence, allow the narrowing of the content and scope of existing rights and freedoms (in particular, of persons in public service) and the limitation of constitutional human and citizen's rights and freedoms in cases not provided for by the Constitution of Ukraine;

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

The subject of the right to constitutional petition believes that the contested provision of the Law contradicts the guaranteed right to equal access to public service enshrined in Article 38.2 of the Constitution of Ukraine, as well as Articles 61.2 and 62.1 of the Basic Law of Ukraine, as it does not provide for levers for ensuring an individual approach to liability and contradicts the principle of the presumption of innocence.

– **the case upon the constitutional petition** of the Supreme Court of Ukraine regarding the conformity of the Law of Ukraine “On the System of Guaranteeing Deposits of Individuals” dated February 23, 2012 No. 4452-VI with the Constitution of Ukraine (constitutionality).

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, since the contested provisions of the Law violate the principles of the separation of state power, the rule of law, equal rights of depositors and can create a situation in which a natural person (depositor) is illegally deprived of ownership of the deposit.

– **the case upon the constitutional petition** of 48 People's Deputies of Ukraine regarding compliance of certain provisions of the Law of Ukraine “On Prevention of Corruption” and Article 366-1 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality).

The 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 liability, the prohibition of interference in private life and the 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 Human Rights Commissioner of the Verkhovna Rada of Ukraine regarding compliance of Article 208.1.4 of the Code of Criminal Procedure of Ukraine with the Constitution of Ukraine (constitutionality).

The petitioner claims that the contested 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 the authorities authorised by the law can apply detention of a person as a temporary preventive measure without a reasoned court decision.

The subject of the right to constitutional petition also believes that Article 208.1.4 of the Code does not correspond to legal certainty as an element of the principle of the rule of law, guaranteed by Article 8.1 of the Constitution of Ukraine, since it provides for the discretionary powers of authorised persons to detain a person without a decision of an investigating judge, a court in the absence of criteria in the legislation that provide grounds for making such a decision.

– **the case upon the constitutional petition** of 49 People's Deputies of Ukraine regarding non-compliance of the Law of Ukraine “On Amendments to Article 12 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations”

regarding the name of religious organisations (associations), which are part of the structure (are part of) a religious organisation (association), the administration center (management) of which is located outside Ukraine in a state recognised by law as having carried out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine” dated December 20, 2018 No. 2662–VIII with the provisions of Articles 6.2, 8.1, 8.2, 19.2, 35.1, 35.2, 35.3, 36.1, 36.5, 37.1, 37.4, 84.2, 84.3, 88.3, and 91 of the Constitution of Ukraine (unconstitutionality).

The petitioners claim that the Law nullifies religious freedom and interfaith peace in Ukraine, violates the constitutional citizens’ rights and freedoms, in particular the right to freedom of belief and religion, the right to freedom of association in an organisation to exercise and protect one's rights and freedoms and satisfy interests, the right to conduct individually or collectively religious cults and ritual rites, conduct religious activities and is a direct state intervention in church affairs, which contradicts the provisions of Articles 35.1, 35.2, 35.3, 36.1, 36.5, 37.1 and 37.4 of the Constitution of Ukraine.

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

– **the case upon the constitutional petition** of 51 People's Deputies of Ukraine regarding the inconsistency with the Constitution of Ukraine (unconstitutionality) of the provisions of the Law of Ukraine “On the Judiciary and the Status of Judges” dated June 2, 2016 No. 1402–VIII, which provide: “While in office, a judge cannot be a candidate for elected positions in state authorities (except judicial) and local self-government bodies, as well as participate in pre-election campaigning” (Article 54.4.2); “A judge may not be awarded state awards, as well as any other awards, honours, or diplomas until he/she is dismissed from office or his/her powers are terminated. A judge can be awarded state awards only for personal courage and heroism shown by him/her in conditions involving risk to life” (Article 56.9).

According to the People's Deputies of Ukraine, the provisions of Article 54.4.2 of the Law do not correspond to Articles 8, 22, 24, 38, 64, and 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, and 92 of the Basic Law of Ukraine. According to them, the provision of Article 54.4.2 of the Law “represents an arbitrary and extended interpretation of the requirements of Article 127.2 of the Constitution of Ukraine, which effectively deprives judges of their passive right to vote”. In addition, the provisions of Article 56.9 of the Law establish the discrimination of judges against the rest of the representatives of the authorities in Ukraine regarding the awarding of state awards and other awards, distinctions, and diplomas.

– **the case upon the constitutional petition** of 51 People's Deputies of Ukraine regarding the official interpretation of the provisions of Articles 7, 20.7, paragraphs 12, 15, 16 of Article 92.1, parts 1 to 5 of Article 118, Article 133.2, parts 1 to 4 of Article 140, parts 2, 4 of Article 141 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 office of the head of the Kyiv City State Administration, provided that the powers of the person elected by the Kyiv City Mayor have not been 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 office of the head of the Kyiv City State Administration, provided that the powers of the person elected by the Kyiv City Mayor have not been terminated in accordance with the procedure established by law.

The need for an official interpretation of the specified constitutional provisions is justified by “the impossibility of solving the issues raised in the constitutional petition by existing methods of eliminating legal conflicts, as well as the existence of different legal points of view on their solution.”

– **the case upon the constitutional petition** of 45 People's Deputies of Ukraine regarding non-compliance with Articles 1, 6, 8, 19, 85, 92, 106, and 116 of the Constitution of Ukraine (unconstitutionality) of the provisions of Articles 11.1, 11.3.1, 23.2 (according to the constitutional petition - paragraphs 1, 3, part two) of the Law of Ukraine “On the State Bureau of Investigation” dated November 12, 2015 No. 794-VIII in the part of establishing the powers of the President of Ukraine to appoint to the office of director of the State Bureau of Investigation, to select three members of the commission for conducting the competition for occupying the offices of the director of the Bureau, his/her first deputy and deputy and informing the President of Ukraine by the director of the Bureau on the main issues of the activity of the Bureau and its divisions on the fulfillment of the tasks assigned to them, as well as submitting to the President of Ukraine 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 provides for an exhaustive list of powers of the President of Ukraine, does not provide for his/her appointment of heads of central executive bodies (including the director of the Bureau), members of the competitive commission for the selection of heads of any central executive bodies, as well as implementation by the President of Ukraine of control over the work of such executive bodies, direction and coordination of their activities¹.

– **the case upon the constitutional petition** of 51 People's Deputies of Ukraine regarding the inconsistency with the Constitution of Ukraine (unconstitutionality) of the provisions of Section I, clause 2 of subparagraph 1 of paragraph 2 of Section II of the Law of Ukraine “On Repeal of the Law of Ukraine “On the List of State Property Objects Not Subject to Privatisation”” dated October 2, 2019, No. 145-IX, by which the Verkhovna Rada of Ukraine decided to repeal the Law of Ukraine “On the List of State Property Objects Not Subject to Privatisation” and in the Law of Ukraine “On

¹ In part of the constitutional petition, the initiating of constitutional proceedings in the case was refused.

Privatisation of State and Communal Property” paragraph 19 of Article 4.2 shall be excluded.

The People's Deputies of Ukraine believe that the provisions of Section I of the Law do not correspond to 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 clause 2 of subparagraph 1 of paragraph 2 of Section II of the Law contradict Articles 13.4 and 17.1 of the Basic Law of Ukraine.

– **the case upon the constitutional petition** of 46 People's Deputies of Ukraine regarding the official interpretation of the provisions of Article 13.1.1 of the Constitution of Ukraine, according to which the land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, the exclusive (maritime) economic zone are objects of property rights of the Ukrainian people, and Article 14.1 of the Constitution of Ukraine, according to which land is the main national wealth under the special protection of the state, in a systematic connection with other provisions of the Constitution of Ukraine:

– Preamble, in which it is established 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, whereby Ukraine is a sovereign and independent, democratic, social, law-based state;

– Article 3.2, whereby 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, whereby 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, whereby 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 authors of the petition, the absence of an official interpretation of the concept of land as an object of property rights of the Ukrainian people, the main national wealth in the context of Article 13.1.1, Article 14.1 of the Constitution of Ukraine may in the future call into question the compliance with the Basic Law of

Ukraine of any 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 land ownership of the Ukrainian people and the land ownership of citizens, legal entities, territorial communities, and the state are not the same.

– the case upon the constitutional petition of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine regarding non-compliance of Article 90, subparagraph 1 of paragraph 2 of Chapter XI “Final and Transitional Provisions” of the Law of Ukraine “On Civil Service” dated December 10, 2015 No. 889-VIII, Article 21.7 of the Law of Ukraine “On Service in Local Self-Government Bodies” dated June 7, 2001 No. 2493-III with Articles 1, 3.2, 8.1, 8.2, 19.2, 22.2, 22.3, 40, 46.1, 46.2, and 64 of the Constitution of Ukraine (unconstitutionality).

According to the contested provisions of Law No. 889, the pension provision of civil servants is carried out in accordance with the Law of Ukraine “On Compulsory State Pension Insurance” (Article 90); the Law of Ukraine “On Civil Service” dated December 16, 1993 No. 3723-XII, as amended, except for Article 37, which applies to persons specified in paragraphs 10 and 12 of Chapter XI “Final and Transitional Provisions” of the Law No. 889 (subparagraph 1 of paragraph 2 of Chapter XI “Final and Transitional Provisions”), is recognised as having lost its effect. Pursuant to Article 21.7 of Law No. 2493, pension provision of local self-government officials is carried out in accordance with the Law of Ukraine “On Compulsory State Pension Insurance”.

The petitioner claims that the contested provisions of Law No. 889 and Law No. 2493 have changed the conditions of pension provision for civil servants and officials of local self-government, and also do not provide for the right to recalculate (indexation) pensions appointed under the Law of Ukraine “On Public Service” of December 16 No. 3723-XII of 1993 as amended, therefore they do not correspond to certain provisions of the Constitution of Ukraine.

– the case upon the constitutional petition of 50 People's Deputies of Ukraine regarding the conformity of the Law of Ukraine “On Amendments to Article 80 of the Constitution of Ukraine (regarding the immunity of People's Deputies of Ukraine)” with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition claims that the disputed Law does not comply with Articles 6, 8, 19, and 155 of the Constitution of Ukraine, since its adoption by the Verkhovna Rada of Ukraine took place in violation of the constitutional deliberation and adoption procedure, and therefore, the parliament violated the principle of the rule of law and acted in a manner not provided for by the Constitution of Ukraine.

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

parliament, thereby grossly violated the procedure for amendments to the Constitution of Ukraine established by the Basic Law of Ukraine”.

– **the case upon the constitutional petition** of 54 People's Deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of certain provisions of the laws of Ukraine “On Verification and Monitoring of State Payments”, “On Banks and Banking Activities”, “On the State Border Service of Ukraine”, “On the Protection of Personal Data”, “On the State Registration of Acts of Civil Status”, “On the Collection and Accounting of a Single Contribution to Compulsory State Social Insurance”, “On the State Register of Voters”, “On Information”, “On Employment of the Population”, “About the Unified State Demographic Register and Documents Confirming the Citizenship of Ukraine, Certifying a Person or his/her Special Status”, “On the State Registration of Property Rights to Immovable Property and Their Encumbrances”, “About the State Registration of Legal Entities, Natural Persons - Entrepreneurs and Public Formations”.

The subject of the right to constitutional petition believes that the said disputed provisions of the laws of Ukraine contradict Articles 8.1 and 32.2 of the Constitution of Ukraine, since they, in particular, do not comply with the principle of legal certainty as a component of the rule of law, and the declared “legitimate purpose of verification and one of its elements - the processing of confidential information without a person's consent, is not consistent with any of the three public interests specified in Article 32.2 of the Constitution of Ukraine: national security, economic well-being, human rights.”

– **the case upon the constitutional petition** of 50 People's Deputies of Ukraine regarding compliance of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding Priority Measures for the Reform of Prosecutor's Offices” with the Constitution of Ukraine (constitutionality).

The petitioners believe that the adoption of Law No. 113 “caused the narrowing of the content and scope of the existing rights of citizens, introduced the dualism of the legal foundations of the organisation and activities 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, 131¹ of the Basic Law of Ukraine, since it “introduces dual legal regulation of the activities of the Prosecutor's Office of Ukraine, the powers of the Prosecutor General, the status of prosecutors, the 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 the violation of the fundamental human and citizen’s rights, which are guaranteed by the Constitution of Ukraine.”

The constitutional petition claims that Law No. 113 contradicts Articles 22, 24, 43 and 64 of the Constitution of Ukraine, as its provisions “illegally limit the scope and deprive employees of prosecutor's office rights and guarantees, which are promulgated 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 groundless dismissal of a certain category of persons, while granting certain privileges to others”.

In addition, the subject of the right to constitutional petition believes that, having adopted Law No. 113, the provisions of which, according to the authors of the petition, contradict the provisions of Articles 8, 9, 19, 22, 24, 43, 64, 92, 106, 131¹ 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 compliance of certain provisions of the Law of Ukraine “On Comprehensive General Secondary Education” with the Constitution of Ukraine (constitutionality).

In the constitutional petition, it is claimed that the provisions of Article 22.2.3 of the Law do not correspond to Article 8.1, 24.1, 24.2, 43.1, 43.6 of the Constitution of Ukraine, since they “remove the constitutional right of citizens to work, and also introduce discriminatory working conditions for persons who have reached retirement age”².

– **the case upon two constitutional petitions** (considered in merged proceedings):

1) of 48 People’s Deputies of Ukraine regarding the compliance of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Conditions for the Circulation of Agricultural Land” and certain provisions of the Land Code of Ukraine as amended by the specified law with the Constitution of Ukraine (constitutionality).

People’s Deputies of Ukraine stress that land is the only strategic resource that cannot be reproduced, as well as a precondition for the viability and preservation of the gene pool of the Ukrainian nation, on which food security and the economic role of Ukraine in the world depend; the loss of land, which is an integral part of the State’s territory, poses a threat of the State to lose its sovereignty, and in the worst case, the cessation of the existence of the State as such, as the territory of the State, primarily land, is deemed to be an integral attribute of any statehood.

The subject of the right to constitutional petition argues that the land as an object to the right of ownership of the Ukrainian people is the main national wealth, and reliance to agricultural land is under special protection of the State.

According to the authors of the petition, 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 are entitled to decide on the disposal of land as an object of the right of ownership through an all-Ukrainian referendum;

2) of 53 People’s Deputies of Ukraine on the compliance of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Conditions for the Circulation of Agricultural Land” with the Constitution of Ukraine (constitutionality).

According to the authors of the petition, “the Law is unconstitutional, since its adoption by the Verkhovna Rada of Ukraine took place in violation of the constitutional procedure for consideration and adoption of the law, and the provisions

² In part of the constitutional petition, the initiating of constitutional proceedings in the case was refused.

of the Law, as well as its purpose, contradict the provisions of the Constitution of Ukraine.”

The People’s Deputies of Ukraine accentuate that “issues relating to land, which is the Ukrainian people’s property, cannot be resolved against their will, without the will of the citizens of Ukraine at an all-Ukrainian referendum.”

– **the case upon the constitutional petition** of 142 People’s Deputies of Ukraine regarding the official interpretation of a certain provision of the fourth paragraph of the preamble of the Constitution of Ukraine.

The authors of the petition ask for an official interpretation of a specific provision of the fourth paragraph of the preamble of the Constitution of Ukraine, namely, to interpret the wording “decent living conditions for him/her” in a systematic connection with the following provisions of the Constitution of Ukraine:

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

According to the authors of the petition, the need for an official interpretation of a certain provision of the fourth paragraph of the preamble of the Constitution of Ukraine in a systematic connection with the indicated provisions of the Basic Law of Ukraine arose in order to find out what living conditions for an individual should be considered decent, in relation to the social orientation of the state economy, and also what is an indicator of decent conditions for living in the aspect 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 on the conformity of the Law of Ukraine “On Amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine on Counteracting Abuses of the Rights of People’s Deputies of Ukraine During the Legislative Procedure” with the Constitution of Ukraine (constitutionality).

The subject of the right to constitutional petition believes that during the consideration and adoption of the Law, the legislative procedure was violated, in particular, the requirements set out in the Articles 83.5 and 93.1 of the Constitution of Ukraine.

The authors of the petition also argue that contrary to the provisions of Article 1, Article 5.2, Article 8.1, Article 8.2, Article 22.2, Article 22.3, Article 38.1, Article 79.1, Article 79.2, Article 79.3, and Article 93.1 of the Constitution of Ukraine, the Law provides for depriving a People’s Deputy of Ukraine of the opportunity to properly defend his/her right to legislative initiative, which he/she, in particular,

implements 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 on the conformity of certain provisions of the Economic Code of Ukraine, the laws of Ukraine “On the Cabinet of Ministers of Ukraine”, “On Pipeline Transport”, “On the Management of State Property” with the Constitution of Ukraine (constitutionality).

The authors of the petition argue that the impugned legislative provisions do not comply with Article 1, Article 6.2, Article 8.1, Article 8.2, Article 19.2, Article 85, Article 113.1, paragraphs 5, 9 of Article 116 of the Constitution of Ukraine, since they “are adopted not in the development of the constitutional norms for the implementation by the Cabinet of Ministers of Ukraine of the management of state property, but on the contrary, within the aim of eliminating the Government of Ukraine from exercising the powers vested in it by the Constitution, which will unbalance the system of exercising a state power.”

The subject of the right to constitutional petition also believes 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 authorities, the Verkhovna Rada of Ukraine exceeded its constitutional powers.”

– **the case upon the constitutional petition** of 50 People’s Deputies of Ukraine on the conformity of the Law of Ukraine “On the Prevention of Prosecution and Punishment of Persons Regarding the Events that Occurred During the Conduct of Peaceful Assemblies, and the Recognition of Some Laws of Ukraine as invalid” with the Constitution of Ukraine (constitutionality).

The People’s Deputies of Ukraine, in particular, believe that the impugned Law “eliminates the institution of protecting human life and health by the State and eliminates the principle of the inevitability of punishment,” and also creates “in society the impression that crimes against human life and health are allowed to be committed with impunity.”

The authors of the petition note that having provided for the possibility of applying the provisions of the Law of Ukraine “On the Application of Amnesty in Ukraine”, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, the Code of Ukraine on Administrative Offenses in the implementation of the Law in part that does not contradict it, the legislator put the Law above the codes, which are governing criminal and criminal procedure legislation, thereby violating 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, since the draft Law was not considered by the committee of the Verkhovna Rada of Ukraine and submitted to the Parliament without its conclusion, and the People’s Deputies of Ukraine were deprived of the right to submit proposals and amendments thereto, since the Act was passed ad hoc; the entry into force of the Law took place in violation of the requirements of Articles 94 and 112 of the Constitution

of Ukraine, since the signing of the Law was carried out by the Chairman of the Verkhovna Rada of Ukraine, who was not authorised to act as the President of Ukraine.

– **the case upon the constitutional petition** of 58 People’s Deputies of Ukraine on the conformity of certain provisions of the Law of Ukraine “On the State Bureau of Investigation” with the Constitution of Ukraine (constitutionality).

According to the authors of the petition, the legislator did not comply with the requirements of the Basic Law of Ukraine, namely, in Article 1 of the Law, the legislator changed the status of the State Bureau of Investigation, «renaming the central executive body for law enforcement activities into a „state law enforcement agency“», in fact, removing it from the system of central bodies of executive power and thus subordinating it 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 stress that the provisions of the Law, which provide for the empowerment of the President of Ukraine to determine the organisational structure of the State Bureau of Investigation, to appoint and dismiss the Director of the State Bureau of Investigation, to determine the composition of the commission for holding a competition for the position of Director of the State Bureau of Investigation, to approve Council of Public Control and the procedure for its formation, do not comply with Article 106 of the Constitution of Ukraine, since the President of Ukraine is entitled with the powers that are not constitutionally inherent for him.

The subject of the right to constitutional petition argues that the impugned provisions of the Law also contradict with “foundations of the legal order in Ukraine, since the legislator expanded the functions and the scope of powers of the President of Ukraine at the legislative level, thus, violating the provisions of Article 106 of the Constitution of Ukraine regarding the exclusive scope and content of the powers of the President of Ukraine, provided for by the Fundamental Law of Ukraine. By such actions, the legislator violated the constitutional requirements provided for by Articles 8 and 19 of the Constitution of Ukraine on 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 on the conformity of certain provisions of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving Banking Regulation Mechanisms” and this Law in whole, certain provisions of the Civil Code of Ukraine, the Code of Criminal Procedure of Ukraine, the Code of Administrative Procedure of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Commercial Procedure of Ukraine, the laws of Ukraine “On the National Bank of Ukraine”, “On Banks and Banking Activity”, “On Deposit Guarantee System”, “On Enforcement Proceedings” as amended by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Banking Regulation Mechanisms” (Law No. 590) with the Constitution of Ukraine (constitutionality).

The People’s Deputies of Ukraine believe that the impugned provisions of the specified above legislative acts provide the National Bank of Ukraine, the Fund for

Guaranteeing Deposits of Individuals and related state institutions with advantages with respect to appeal against their administrative acts before other participants in the judicial process. In addition, according to the authors of the petition, the amendments introduced by the Law No. 590 leveled the principle of the rule of law, the basis of competitiveness and equality of parties to judicial proceedings and thus violated the right to a fair trial and effective judicial protection of plaintiffs in cases of appealing against these administrative acts.

It is also noted in the constitutional petition that there is a violation of the procedure for considering and adopting the Law No. 590 (reg. No. 2571-d).

– **the case upon the constitutional petition** of 48 People’s Deputies of Ukraine on conformity 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 where more than 50 percent of shares (stocks) belong to the State, adopted by the Resolution of the Cabinet of Ministers of Ukraine of 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 those who are elected to the supervisory boards of companies in the authorised capital where more than 50 percent of shares (stocks) belong to the State, adopted by the Resolution of the Cabinet of Ministers of Ukraine of March 10, 2017, No. 143 with the Constitution of Ukraine (constitutionality)

In particular, the authors of the petition consider the impugned legislative acts as inconsistent with the Constitution of Ukraine in regard to empower the Cabinet of Ministers of Ukraine to independently regulate relations on the management of state property, instead of establishing them at the level of the law.

In addition, it is argued that the impugned provisions, according to which, namely, the majority in the supervisory boards of state enterprises are independent members, who, when making managerial decisions, must be guided by the interests of such enterprises; moreover, such provisions also allow the election of foreigners as independent members of such boards, which do not comply with Article 1, Article 5.2, Article 6.2, Article 8.1, Article 8.2, Article 13.4, Article 17.1, Article 19.2, Article 38.1, Article 75, Article 92.1.12, Article 116.5 of the Constitution of Ukraine.

– **the case upon the constitutional petition** of 47 People’s Deputies of Ukraine on the conformity of the provisions of paragraphs one-four of part two, part three, parts six-nine, parts twenty, twenty-one, twenty-two, part twenty-six, parts twenty-thirty-three of Article 91, Article 92 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)

In accordance with the argumentation provided by the People’s Deputies of Ukraine, during the adoption of the Law No. 555 the Verkhovna Rada of Ukraine, as a legislative body, acted outside the limits of its authority by intervening in the sphere of constitutional powers of another branch of power, in particular the executive, without

alternative establishing at the legislative level the coefficients and the mechanism for calculating the “green” tariff, thus depriving the authorised body of executive power of its discretion and powers to change such tariffs in any way; in the opinion of the People’s Deputies of Ukraine, the impugned provisions of the Law No. 2019 in their interconnection lead to the unlawful expenses from the State Budget of Ukraine and its imbalance.

– **the case upon the constitutional petition** of 49 People’s Deputies of Ukraine on the conformity of the Law of Ukraine “On the High Anti-Corruption Court” with the Constitution of Ukraine (constitutionality).

It is noted that the Law is inconsistent with Article 1, Article 2.1, Article 5.2, Article 8.1, Article 8.2, Article 21, Article 22.2, Article 22.3, Article 24.1, Article 38.1, Article 43.2, Article 85.1.3, Article 92.1.14, Article 125.6, Article 126.1, Article 126.2, Article 127.3, Article 127.4, Article 128.1, Article 129.2.8, Article 130.1, 131.1.1 of the Constitution of Ukraine.

The People’s Deputies of Ukraine argue that the provisions of the Law that determine the status of the High Anti-Corruption Court (Article 1); peculiarities of introducing amendments to the Law (Article 2.2); the powers of the High Anti-Corruption Court (Article 4.1); the number of judges of the High Anti-Corruption Court (Article 5.1); requirements for a position of a judge of the High Anti-Corruption Court, as well as restrictions imposed on candidates for the position of a judge of this court (Article 7.2, Article 7.4); the procedure for holding a competition for the appointment of a judge of the High Anti-Corruption Court and empowerment of the Public Council of International Experts (Article 8); additional security guarantees for judges of the High Anti-Corruption Court (Article 10); monitoring the integrity of judges of the High Anti-Corruption Court (Article 11); provision of housing conditions for judges of the High Anti-Corruption Court (Article 13) “do not comply with the Constitution of Ukraine, since, given their legal uncertainty, they narrow the existing scope and content of citizens’ rights, including labour rights, enshrined in the Constitution and laws of Ukraine.” According to the authors of the petition, “there is every reason to declare the Law as unconstitutional in whole”.

– **the case upon the constitutional petition** of 51 People’s Deputies of Ukraine on the conformity of Paragraph 51.3 of the Procedure for organising and holding exchange auctions for the sale of crude oil, gas condensate of own production and liquefied gas, adopted by the Resolution of the Cabinet of Ministers of Ukraine “On auctions for the sale of oil crude, 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 his/her 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 purchase and sale agreement. It is noted that the impugned provision establishes the legal regime of ownership of these types of raw materials and provides for unequal competitive conditions for participants in the oil and gas market. By regulating legal relations, which should be

determined exclusively by the laws of Ukraine, the Cabinet of Ministers of Ukraine acted outside the limits of its authority.

– **the case upon the constitutional petition** of 47 People’s Deputies of Ukraine on the conformity of the provisions of Articles 96¹, 96² of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality)

The authors of the petition believe that the impugned provisions of the Code do not comply with the specified provisions of the Constitution of Ukraine (are unconstitutional), since a special confiscation duplicates the punishment in the form of confiscation of property, violates the principle of proportionality, the principle of individualization of liability and the presumption of innocence, deprives the right of private property.

– **the case upon the constitutional petition** of 47 People’s Deputies of Ukraine on the conformity of certain provisions of the laws of Ukraine “On the 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 for Finding, Tracing and Management of Assets Derived from Corruption and other Crimes”, the Criminal Code of Ukraine, the Civil Procedure Code of Ukraine with the Constitution of Ukraine (constitutionality)

Issues of the constitutionality of the provisions that are singled out in a separate constitutional proceedings are as follows:

- paragraphs seventeen, eighteen of part one of Article 1, paragraphs 2, 2¹, 3, 8-11 of part one, part three of Article 46 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 368⁵ of the Criminal Code of Ukraine;

- Article 23.4, Article 24.3, Article 26.3, Article 34.1.2, Article 81.2.2, Article 89.4, Article 116.4.2, Article 150.1.1¹, Article 151.3, Article 153.5, Article 272.8.2, Article 274.4., Articles 290, 291, 292, Article 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;

- Article 8.5.3, Article 23.3.4, Article 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;

- Article 16.1.10, paragraphs 2, 4, 17 of Article 17.1, Article 19, Article 26.3.1.14 of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” of October 14, 2014, No. 1698-VII as amended;

- Article 6.1.8¹, paragraphs 2¹, 2², 10, 11 of Article 7.1, Article 8.1.1, 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, Article 15.1.2, Article 16.1.1, Article 19.1.1, Article 20.1.1, Article 23.4, paragraphs 1-4 of Article 25.1 of the Law of Ukraine “On the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and other Crimes” of November 10, 2015, No. 772-VIII as amended.

The authors of the petition believe that certain provisions of these legislative acts do not comply with Articles 1, 3, Article 6.2, Articles 8.1 and 8.2, Article 19.2, Article 21, Articles 22.2 and 22.3, Articles 24.1 and 24.2, Articles 32.1 and 32.2, Articles 41.1, 41.4 and 41.6, Article 58, Article 61.2, Articles 62.1, 62.2 and 62.3, Article 64, Article 68.1 of the Constitution of Ukraine.

– **the case upon the constitutional petition** of 45 People’s Deputies of Ukraine on the conformity of the provisions of Article 37.2.1, Article 45, paragraph 12 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 and certain provisions of the Code of Administrative Procedure of Ukraine, the Code of Economic Procedure of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Criminal Procedure of Ukraine with the Constitution of Ukraine (constitutionality).

It is noted that “the judiciary is headed by an unconstitutional body, the “Grand Chamber of the Supreme Court”, which is part of the Supreme Court only in name, but in terms of functions and competence is a separate instance from the Supreme Court, whose judges are appointed in violation of the uniform status of a judge under the unforeseen procedure in the Constitution.”

– **the case upon the constitutional petition** of 45 People’s Deputies of Ukraine on the conformity of the Law of Ukraine “On the Specifics of the Privatisation of Enterprises of the State Joint-Stock Company “Ukrudprom”, Decree of the Cabinet of Ministers of Ukraine “On measures to privatize blocks of shares in the enterprises of the State Joint-Stock Company “Ukrudprom” with the Constitution of Ukraine (constitutionality)

The petitioners consider that the Law and Decree do not comply with the provisions of Article 13.4, Article 21, Articles 22.2 and 22.3, Articles 24.1 and 24.2, Article 41.2, Articles 42.1 and 42.3, Article 64.1 of the Constitution Ukraine. They argue that most of the provisions of the Law “establish and ensure the implementation of the privileged right of investors to acquire ownership of blocks of shares in Ukrudprom enterprises.”

– **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 official interpretation of the provision of Article 105.1 of the Constitution of Ukraine arose due to the fact that “in the Constitution of Ukraine, the immunity of the Head of the Ukrainian State is defined without specific parameters, only by a short formula; the Basic Law does not specify what the immunity of the President of Ukraine is. At the same time, there are no norms in the legislation of Ukraine that would detail the immunity of the Head of State and specify the grounds and procedural mechanism for bringing the President of Ukraine to liability 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 Decision of the Constitutional Court of Ukraine No. 19-rp/2003 of December 10, 2003, in the case of the immunity

and impeachment of the President of Ukraine, according to the analysis of which, the Supreme Court finds that the President of Ukraine during the term of holding this post cannot be brought specifically to criminal liability and can be removed from the office only on the basis of the constitutional procedure of impeachment; according to the current legislation of Ukraine, the President of Ukraine can be prosecuted only after the expiration of his/her term of office or in the event of early termination of his/hers powers by way of impeachment; the question of whether the President of Ukraine can be brought to administrative liability is not disclosed in this Decision.

At the same time, according to the subject of the right to constitutional petition, the President of Ukraine is the 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 make decisions on bringing the Head of the State to administrative liability. The Supreme Court also notes that the national courts do not always take the same approach to resolving issues of the possibility to bring the President of Ukraine to administrative liability.

– the case upon the constitutional petition of the Supreme Court on the conformity of paragraph 3 of Section III “Final and Transitional Provisions” of the Law of Ukraine “On Recognising the Law of Ukraine “On the List of Objects of State Property Rights Not Subject to Privatisation” as invalid” with the Constitution of Ukraine (constitutionality).

According to the impugned 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 rights, which, on the day the Law came into force, were included in the lists approved by the Law of Ukraine “On the List of Objects of State Property Rights Not Subject to Privatisation”, within three years from the date when the Law has come into force, except for the collection of funds and goods pledged under the credit agreements.

According to the Supreme Court, paragraph 3 of Section III “Final and Transitional Provisions” of the Law “restricts an individual’s constitutional right to judicial protection and violates constitutional guarantees on the binding nature of the court decision.”

– the case upon the constitutional petition of 46 People’s Deputies of Ukraine on the conformity of the Resolution of the Cabinet of Ministers of Ukraine “On the implementation of the pilot project 66 “National operator in the tobacco products market” of September 9, 2020, No. 840 with the Constitution of Ukraine (constitutionality)

According to the petitioners, the Resolution is unconstitutional, since its provisions are aimed at “unlawful restriction of competition, establishing and fixation for a long time the monopoly position of one business entity in the market”, make it impossible “to carry out business activities by other business entities in this area”, and also “force other participants in the Ukrainian tobacco products market to cooperate with a legal entity determined by the National Operator, regardless of their will and the principle of free enterprise.”

People's Deputies argue that by adopting the Resolution, the Cabinet of Ministers of Ukraine acted outside the limits of its authority, since the freedom of entrepreneurial activity can be limited exclusively by the laws.

– **the case upon the constitutional petition** of 51 People's Deputies of Ukraine on the conformity of the provisions of Article 4.1.6, Article 11.3 of the Law of Ukraine “On the Voluntary Association of Territorial Communities” with the Constitution of Ukraine (constitutionality)

The petitioners believe that the impugned provisions of the Law do not comply with the said provisions of the Constitution of Ukraine, since “the presence of a legislatively established mechanism for the unification of territorial communities contradicts the ideology of the voluntary association of territorial communities and leads to a narrowing of the constitutional right of the community residents to such a voluntary association.”

– **the case upon the constitutional petition** of 49 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of the Resolution of the Verkhovna Rada of Ukraine “On the Formation and Liquidation of Districts” with the Constitution of Ukraine (constitutionality)

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

The People's Deputies of Ukraine argue that as of today, it is not clear for ordinary Ukrainian citizens which court to apply to; to find out the relevant information, it is necessary to spend additional efforts that do not contribute to ensuring the access of Ukrainian citizens to justice. The system of a pre-trial investigation in prosecutor's offices is built according to the administrative-territorial structure of the state, therefore, in case of changing the boundaries of the districts territories, it will be necessary to coordinate the entire system of law enforcement agencies to determine their jurisdiction as well as jurisdiction of cases.

In addition, according to the subject of the right to constitutional petition, citizens of Ukraine are deprived of real access to both executive authorities and local governments, as well as the courts. The enlargement of the territories of the districts will create additional complications, which in the future will lead to delays in court review and violation of procedural deadlines; the procedure for the reorganization of the courts in connection with the enlargement of the districts needs to attract huge organisational and material resources. According to the People's Deputies of Ukraine, the adoption of the Resolution created legal uncertainty in the functioning of the judiciary and the access of citizens of Ukraine to justice.

The Resolution determined the cities that became the administrative centers of the respective districts. According to the authors of the petition, the legislation of Ukraine does not contain the concept of “administrative center of the region”, and also does not normalise the specifics of the status of administrative-territorial units in connection with their definition as such centers. In the opinion of the People's Deputies

of Ukraine, this does not meet the principle of legal certainty, enshrined in Article 8 of the Constitution.

– the case upon two constitutional petitions:

1) of the Ukrainian Parliament Commissioner for Human Rights on the conformity of the provisions of Article 4.6 of the Law of Ukraine “On State Financial Guarantees of Medical Care to the Population” of October 19, 2017, No. 2168-VIII with the Constitution of Ukraine (constitutionality).

The petitioner argues that during 2017-2019, the Verkhovna Rada of Ukraine adopted a number of laws on reforming the healthcare system in Ukraine, primarily, the Law No. 2168. The legislator also amended other laws in this area of legal relations (the so-called medical reform). At the beginning of 2020, Ukraine challenged to combat the pandemic of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2, for which the Cabinet of Ministers of Ukraine established a quarantine and implemented appropriate legal regulation in order to prevent its spread in the territory of Ukraine. According to the subject of the right to constitutional petition, the initiated medical reform, followed in some cases by the establishment at the legislative and sub-legal levels of disproportionate goals of the means to achieve it, i.e. anti-epidemic measures, led to violations and restrictions on the constitutional rights and freedoms of an individual and a citizen, evidence of which are numerous appeals of citizens on these questions to the Commissioner.

The subject of the right to constitutional petition believes that the provision of Article 4.6 of Law No. 2168 “except in cases established by law” “is unconstitutional, since it does not comply with the constitutional conditions for the legality of restrictions on the right to a healthcare”, and “the existence of the narrowing the program of medical guarantees in the above legislative provision ... contradicts the Constitution of Ukraine.”

2) of the 59 People’s Deputies of Ukraine on the compliance of the Law of Ukraine “On State Financial Guarantees of Medical Care to the Population” of October 19, 2017, No. 2168-VIII with the Constitution of Ukraine (constitutionality).

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

– the case upon the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights on the conformity of the provisions of Articles 16.5 and 16.16 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” of November 19, 1992, No. 2801-XII as amended, Article 29.4 of the Law of Ukraine “On the Protection of the Population from Infectious Diseases” of April 6, 2000 No. 1645-III, paragraph two of Section II of the Law of Ukraine “On Amending and Recognising Certain Legislative Acts of Ukraine as invalid” of December 28, 2014, No. 76-VIII with the Constitution of Ukraine (constitutionality).

Substantiating the unconstitutionality of the impugned provisions of the Fundamentals, Law No. 76, the author of the petition notes that the provisions of Article 49.3 of the Constitution of Ukraine guarantee “non-reduction of the existing network of state and municipal health care institutions.”

According to the Ukrainian Parliament Commissioner for Human Rights, since the provisions of Article 29.4 of Law No. 1645 «do not specify which rights are subject to quarantine and for what period of time they may be limited, the provisions “temporarily restrict the rights of individuals and legal entities” do not comply with the provisions of Articles 8, 49, 64 of the Constitution of Ukraine.»

The petitioner concludes that the impugned provisions of the Fundamentals, Law No. 1645, Law No. 76 contradict the provisions of Articles 1, 3, Articles 8.1 and 8.2, Articles 22.2 and 22.3, Article 49, Article 64.1 of the Constitution of Ukraine.

– **the case upon the constitutional petition** of 45 People’s Deputies of Ukraine on the conformity of Articles 133–191, subparagraph 2 of paragraph 2 of Section XXXXII “Final and Transitional Provisions” of the Electoral Code of Ukraine as amended with the Constitution of Ukraine (constitutionality).

Articles 133–191 structurally constitute Book Three of the Code “Elections of People’s Deputies of Ukraine”, which regulates the preparation and conduct of elections of People’s Deputies of Ukraine. In particular, according to its provisions, the main principles of the election of People’s Deputies of Ukraine are as follows: elections of People’s Deputies of Ukraine are carried out on the basis of a proportional system according to a single list of candidates for People’s Deputies of Ukraine in a nationwide constituency, from which regional election lists of candidates for People’s Deputies of Ukraine from parties are formed; the right to participate in the distribution of deputy mandates is acquired by parties in support of regional electoral lists of candidates for People’s Deputies of Ukraine, from which five or more percent of the total number of votes of voters who supported regional electoral lists of candidates for People’s Deputies of Ukraine from all parties inside state-level district.

Subparagraph 2 of paragraph 2 of Section XXXXII “Final and Transitional Provisions” of the Code is recognised to be invalid from the date the Code has entered into force, the Law of Ukraine “On Elections of People’s Deputies of Ukraine” of November 17, 2011, No. 4061-VI as amended, except for provisions on organization and holding by-elections and replacement of People’s Deputies of Ukraine elected in the state-level constituency, whose powers have been prematurely terminated, valid until the next regular or extraordinary elections of People’s Deputies of Ukraine.

The petitioners argue that the impugned provisions of the Code actually changed the system of elections of People’s Deputies of Ukraine, in particular, the majority system of relative majority was canceled, according to which 225 People’s Deputies of Ukraine were elected before the day the Code has come into force.

– **the case upon the constitutional petition** of 49 People’s Deputies of Ukraine on the conformity of the decrees of the President of Ukraine “On the removal from office of a judge of the Constitutional Court of Ukraine” of December 29, 2020, No. 607/2020, “On the removal from office of a judge of the Constitutional Court of

Ukraine” of February 26, 2021, No. 79/2021, “On Certain Issues of Ensuring the National Security of Ukraine” of March 27, 2021, No. 124/2021 with the Constitution of Ukraine (constitutionality).

By the Decree No. 607 Oleksandr Tupytskyi was removed from his office as a judge of the Constitutional Court of Ukraine for a period of two months, and by the Decree No. 79 for another one month, starting from February 28, 2021; the Decree No. 124 canceled the Decree of the President of Ukraine “On the appointment of O.Tupytskyi as a judge of the Constitutional Court of Ukraine” of May 14, 2013, No. 256/2013 and the Decree of the President of Ukraine “On the appointment of O.Kasminin as a judge of the Constitutional Court of Ukraine” of September 17, 2013, No. 513/2013.

According to the petitioners, the President of Ukraine, by issuing the Decrees Nos. 607 and 79 (concerning the removal of O.Tupytskyi from the office of a judge of the Constitutional Court of Ukraine), went beyond his constitutional powers, and by the Decree No. 124 the Head of the State “unconstitutionally in excess of his powers” repealed the Decrees Nos. 256 and 513 (by which O.Tupytskyi and O.Kasminin were appointed as the judges of the Constitutional Court of Ukraine), thus violating the guarantees of the activity of the Constitutional Court of Ukraine and the fundamental constitutional principle of the presumption of innocence.

The petitioners argue that the Decrees Nos. 607, 79 and 124 were issued in excess of the constitutional powers by the President of Ukraine, thus contradicting the constitutional principles of the organisation of state power in Ukraine and the constitutional principles of the activities of the Constitutional Court of Ukraine, and also infringe on the constitutional legal status of a judge of the Constitutional Court of Ukraine.

The People’s Deputies of Ukraine believe that the Decrees Nos. 607, 79, and 124 do not comply with Article 1, Article 6.2, Articles 8.1 and 8.2, Article 19.2, Articles 106.1 and 106.2, Article 147.2, Articles 149.1 and 149.2, Article 149¹ of the Constitution.

– the case upon the constitutional petition of the Supreme Court on the conformity of the provisions of sub-paragraph thirteenth of paragraph 23¹ of Section III “Final and Transitional Provisions” of the Law of Ukraine “On the High Council of Justice” of December 21, 2016 No. 1798-VIII [Law No. 1798], sub-paragraphs one, six and eleven of paragraph 4 of section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and the Activities of Disciplinary Inspectors of the High Council of Justice” of July 14, 2021, No. 1635-IX with the Constitution of Ukraine (constitutionality)

The petitioner argues that the procedure for making decisions by the Ethics Council, provided for in sub-paragraph thirteen of paragraph 23¹ of Section III “Final and Transitional Provisions” of the Law No. 1798, negates the procedure for the formation of the High Council of Justice predetermined by the law, which violates the principle of the independence of judges. In addition, it is also noted that the adoption of legal acts by the parliament (in relation to the provision contained in the sub-

paragraph one of paragraph 4 of Section II “Final and Transitional Provisions” of the Law No. 1635) has signs of parliamentary interference in the independence of the judiciary as a whole.

In its constitutional petition, the Supreme Court accentuates that the procedure for removing a member of the High Council of Justice from office, established by subparagraph six of paragraph 4 of Section II “Final and Transitional Provisions” of the Law No. 1635, may lead to the termination of the activities of the state authority, i.e. the High Council of Justice, which performs constitutional function, and the procedure for dismissing a member of the High Council of Justice, regulated by paragraphs five to eleven of the said paragraph, has signs of inconsistency with the rule of law.

– **the case upon the constitutional petition** of the Supreme Court on the conformity with the Constitution of Ukraine (constitutionality) of Article 34.1.11, paragraph 10¹ of Section XIII “Final and Transitional Provisions” of the Law of Ukraine “On Enforcement Proceedings” of June 2, 2016, No. 1404-VIII, paragraphs 5¹, 5² of Section III “Transitional and Final Provisions” of the Law of Ukraine “On the Peculiarities of the Formation of a Joint Stock Company of Public Railway Transport” of February 23, 2012, No. 4442-VI with the Constitution of Ukraine (constitutionality).

According to the subject of the right to constitutional petition, the impugned provisions of the Laws Nos. 1404 and 4442 do not comply with the provisions of Article 8, Article 19.2, Articles 55.1 and 55.2, Article 129.2.9, Articles 129¹.1 and 129¹.2 of the Constitution of Ukraine (are unconstitutional).

– **the case upon the constitutional petition** of 99 People’s Deputies of Ukraine regarding the official interpretation of the provision of the first sentence of Article 4 of the Constitution of Ukraine, namely the phrase “single citizenship”.

The need for official interpretation of the said provision of Article 4 of the Constitution of Ukraine is justified by the People’s Deputies of Ukraine by the “impossibility of resolving” the issues raised in the petition by “the existing methods of eliminating legal conflicts, the existence of different legal approaches on their solution” and the submission by the President of Ukraine for consideration to the Verkhovna Rada of Ukraine of a draft Law of Ukraine on amendments to the Law of Ukraine “On Citizenship of Ukraine” on the grounds and procedure for acquiring and terminating citizenship of Ukraine, reg. No. 6368 of December 2, 2021, the adoption of which, in their opinion, is contrary to the constitutional principle of single citizenship, and thus will legalise multiple citizenship in Ukraine.

The petitioners believe that the legalisation of multiple citizenship is possible only after the interpretation of this provision of the Constitution of Ukraine in the aspect of the concept of “single citizenship” in case the Constitutional Court of Ukraine confirms that the constitutional principle of single citizenship does not contradict the principle of multiple citizenship.

CASES UPON THE CONSTITUTIONAL APPEALS

In 2021, the Constitutional Court of Ukraine considered a case on the constitutional submission of the Verkhovna Rada of Ukraine to give an opinion on the

compliance of the Draft Law on amendments to Articles 85 and 106 of the Constitution of Ukraine regarding the procedure for appointing and dismissing the Director of the National Anti-Corruption Bureau of Ukraine and the Director of the State Bureau of Investigations (reg. No. 5133) with the requirements of Articles 157 and 158 of the Constitution of Ukraine.

«1. To make the following amendments to the Constitution of Ukraine:

1) Article 85.1 shall be supplemented with paragraphs 25¹ and 25² as follows:

“25¹) giving consent to the appointment to a position based on the results of competitive selection and dismissal of the Director of the National Anti-Corruption Bureau of Ukraine by the President of Ukraine;

25²) giving consent to the appointment to a position based on the results of competitive selection and dismissal of the Director of the State Bureau of Investigation by the President of Ukraine”;

2) Article 106.1 shall be supplemented with paragraphs 11¹ and 11² as follows:

11¹) in accordance with the procedure set by the law, appoints and dismisses, with the consent of the Verkhovna Rada of Ukraine, the Director of the National Anti-Corruption Bureau of Ukraine, with the selection of candidates for the position on a competitive basis;

11²) in accordance with the procedure set by the law, appoints and dismisses, with the consent of the Verkhovna Rada of Ukraine, the Director of the State Bureau of Investigation, with the selection of candidates for the position on a competitive basis.”

2. This Law shall enter into force on the day following the day of its publication».

CASES UPON THE CONSTITUTIONAL COMPLAINTS

In 2021, the Constitutional Court of Ukraine considered:

– **the case upon the constitutional complaint** of Polina Marho on the constitutionality of Articles 454.4.1 and 454.7 of the Code of Civil Procedure of Ukraine.

According to the complainant, the above-mentioned provisions of the Code “virtually 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 an abuse of right”, and also violate “her right to access to court, and namely the right to appeal the decision.”

– **the case upon the constitutional complaint** of Ihor Samsin on the 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” with the Constitution of Ukraine.

According to I.Samsin, the impugned provision of the Law contradicts the requirements of Article 8 (on the principle of legal certainty as a rule of law component), Article 58 (on the inadmissibility of retroactive action of the law in time and bringing to liability for actions that were not determined at the time of their commission 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 by a judge of the requirements of incompatibility”.

According to the author of the complaint, those violations that are indicated in Article 1.3 and Article 3.7 of the Law of Ukraine “On Government Cleansing”, which may entail the application of prohibitions and, accordingly, be included in the incompatibility of a judge in the understanding of the second sentence of Article 54.1 of the Law of Ukraine “On the Judiciary and the Status of Judges”, do not meet the constitutional content of this concept, disclosed in Article 42.2, Article 127.2 of the Basic Law of Ukraine.

The complainant also notes that “the inclusion in the concept of incompatibility as a ground for dismissal of a judge of the presence of a ban applied to him on the grounds provided for in Article 1.3, Article 4.3 (submission or non-submission of a certain application), and/or Articles 3.1, 3.2, 3.4 of the Law of Ukraine “On Government Cleansing” (occupation of certain positions)”, is a violation of the presumption of innocence, and testifies to the assignment by the parliament of the function of administering justice, which does not correspond to the constitutional basis for the individualization of legal liability, the principle of proportionality as the rule of law component and contradicts Articles 3, 8, Article 61.2, Article 62.1, Articles 124.1 and 124.2 of the Constitution of Ukraine.

I.Samsin considers that as a result of the application by the court of the impugned provision of the Law, his constitutional rights to non-interference in personal and family life, to manage state affairs, to work, which are guaranteed by Articles 32, 38, 43 of the Constitution of Ukraine, have been violated.

– **the case upon the constitutional complaint** of the Private Joint-Stock Company “Odesteplocomunenerho” on the constitutionality of the provisions of subparagraph “a” of paragraph 2 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 believes that the impugned provision of the Law gives the Ministry of Justice of Ukraine the authority to deprive a person of the right of ownership by abolishing state registration on the basis of errors that are made by the state registrar, which violates the provisions of Article 41.4 of the Constitution of Ukraine. In addition, on complainant’s opinion, the impugned provision of the Law establishes the liability of a person, i.e. the owner of real estate, for mistakes made by the state registrar as a representative of the state, which contradicts Article 3.2 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Hevork Barsehian 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 believes that the establishment by the legislator in Article 485 of the Code of an absolutely definite sanction (the lowest and the highest limits of the amount of the fine are not defined), the impossibility of reducing penalties, the absence of alternative types of sanctions for the commission of the relevant offense, indicates non-compliance with the

requirements of Article 61.2 of Constitution of Ukraine. According to the author of the complaint, the unlimited amount of the fine for violation of customs rules, provided for by the impugned provisions of the Code, turns, in proportion to liability, into an instrument for depriving an individual of his/her property, excessive restriction of the right to an adequate standard of living, which does not correspond to Article 41.1, Article 48 of the Basic Law Ukraine.

– **the case upon the constitutional complaint** of Public Joint Stock Company “AZOT” concerning compliance of Article 320.3.1 of the Code of Commercial Procedure of Ukraine with the Constitution of Ukraine.

According to the complainant, the impugned 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 of an executed court decision, which with the application of an unconstitutional legal norm in favour of the subject of power was resolved property dispute with a subject of private law; making it impossible, contrary to Article 151² of the Constitution of Ukraine, to enforce decisions of the Constitutional Court of Ukraine and restore constitutional rights and freedoms violated by the application of an unconstitutional norm of the law, the impugned provision of the Code levels the very essence of justice and contradicts the main purpose of the court in a democratic society, i.e. to protect constitutional rights and freedoms from violations and illegal encroachments”.

The Public Joint Stock Company notes that the application by the Supreme Court of the provision Article 320.3.1 of the Code led to a violation of its rights guaranteed by the provisions of Article 21, Article 22.2, Articles 41.1 and 41.4, Article 42.1, Articles 55.1 and 55.2 and Article 64.1 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Vasyl Mosiurchak on the conformity with the Constitution of Ukraine (constitutionality) of paragraph 2 of Section XI “Final and Transitional Provisions” of the Law of Ukraine “On public 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 Regarding Pension Provision” of March 2, 2015, No. 213-VIII.

The complainant considers that the said provisions of Law No. 889, Law No. 213 significantly narrow the content of the right to pension provision of civil servants by limiting the previously established guarantees for the recalculation of pensions, since prior to the entry into force of the impugned norms, he had the right to recalculate the pension in accordance with Article 37¹ of the Law No. 3723.

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

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 judgment in

his case. He argues that Article 88.3 of the Law “limits judicial control by establishing an exhaustive list of formal (rather than substantive) grounds for appealing against the decision of the High Qualifications Commission of Judges of Ukraine and makes it impossible to assess the evidence and the actual circumstances of the case in the course of such control”, which indicates the inconsistency of these norms with Article 124.3 of the Constitution of Ukraine, and also contradicts Articles 55.2 and 55.6 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Viktor Koshevyi regarding the compliance (constitutionality) of the provision of Article 90 of the Law of Ukraine “On Public Service” of December 10, 2015, No. 889-VIII with the Constitution of Ukraine.

The complainant claims that “Law No. 889 (Article 90) establishes the rule according to which the pension provision of civil servants is carried out in accordance with the Law of Ukraine “On Compulsory State Pension Insurance” of July 9, 2003, No. 1058-IV, Article 42 of which excludes the possibility of recalculation pensions, in the event of an increase in the wages 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 a health care and medical assistance.

According to the complainant, “implementing 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 took place, 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 (constitutionality) of the provisions of paragraphs 3, 9 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 with the Constitution of Ukraine.

The subject of the right to constitutional complaint claims that the regulation of salaries established by the impugned provisions of the Law has led to a reduction of salaries of judges who have not passed the qualification assessment by more than two times, and, thus, to a significant reduction in the material support of such judges and reduction of constitutional guarantees of their independence, which contradicts Article 126.1 of the Constitution of Ukraine, as well as violates the right of everyone to judicial protection of his/her rights and freedoms.

According to the author of the complaint, the establishment by the provisions of paragraphs 3, 9 of Section II “Final and Transitional Provisions” of the Law of a calculated amount for determining official salaries of judges, different from the calculated amount established by the law on the judiciary, does not comply with Article 8.2, Article 130.2 of the Constitution Ukraine.

– **the case upon the constitutional complaint** of Mykola Naumchuk on the compliance of paragraphs 3, 9 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 with the Constitution of Ukraine (constitutionality).

Comparative analysis of constitutional complaints of M.Demianosov and M.Naumchuk gives grounds for the conclusion that they relate to the same issue, i.e. conformity with the Constitution of Ukraine (constitutionality) of paragraphs 3, 9 of Section II “Final and Transitional Provisions” of the Law, are similar and differ in content only in the descriptive part of the consideration of court cases.

– **the case upon the constitutional complaint** of Oleh Holiashkin regarding the constitutionality of the Law of Ukraine “On the Judiciary and the Status of Judges” of June 2, 2016 No. 1402–VIII, as amended, in whole and the provisions of Article 83.5, sub-paragraph “a” of paragraph Article 85.4, Article 86.1, Article 88.3, paragraph 6 of Article 93.1, Article 101.7 of this Law.

In the complainant’s opinion, the impugned provisions of the Law contradict the provisions of Article 8, Articles 24.1 and 24.2, Article 32.1, Articles 55.1 and 55.2, Article 64.1, paragraph 14 of Article 92.1, subparagraph 4 of paragraph 16¹ of Section XV “Transitional Provisions” of the Constitution of Ukraine, as they give the High Qualification Commission of Judges of Ukraine the power to regulate the procedure of qualification assessment, which must be regulated exclusively by the law, restrict the right of relatives and family members to privacy and contain purely formal grounds for a judicial appeal against the decision of this Commission. The author of the complaint raises the issue of declaring the Law in whole as inconsistent with the requirements of Article 8.2 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of the Joint-Stock Company “Zaporizhzhya Ferroalloy Plant” regarding the compliance (constitutionality) of the provisions of Article 320.3.1 of the Code of Commercial Procedure of Ukraine with the Constitution of Ukraine.

According to the complainant, the impugned provision of the Code restricts the right to judicial protection at the stage of review of court decisions due to exceptional circumstances; makes it impossible to implement decisions of the Constitutional Court of Ukraine and restore constitutional rights and freedoms violated as a result of the application of an unconstitutional norm; levels the very essence of justice and contradicts the main purpose of the court in a democratic society, i.e. to protect constitutional rights and freedoms from violations and unlawful encroachments; makes it impossible to review, due to exceptional circumstances, the executed court decision, which, using an unconstitutional norm of the law in favour of the subject of power, resolved a property dispute with a subject of private law.

The Joint-Stock Company notes that applied in the final court decision in its case, the Decision of the Supreme Court as part of the Boards of Judges of the Cassation Economic Court of January 14, 2020, a separate provision of Article 320.3.1 of the Code, which in case the Constitutional Court of Ukraine declares as unconstitutional the law, applied by the court in resolving the case, allows to review of decisions in connection with exceptional circumstances only “if the court decision has not yet been executed”, does not meet the requirements of Article 3.2, Article 8, Article 13.4, Article 21, Article 22.2, Articles 41.1 and 41.4, Article 42.1, Articles 55.1 and 55.2, Article 64.1, Article 151² of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Hahik Martyrosian regarding the compliance (constitutionality) of the provisions of Article 14².1 of the Code of Ukraine on Administrative Offenses with the Constitution of Ukraine.

In substantiating his position, the author of the complaint believes that the impugned provisions of the Code do not comply with Articles 61, 62 of the Constitution of Ukraine, since they provide for the possibility of bringing vehicle owners to administrative liability even if these persons did not commit an administrative offense.

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

The Joint-Stock Company notes that the application by the Supreme Court of the provisions of Article 320.3.1 of the Code violated its rights guaranteed by the provisions of Article 21, Article 22.2, Articles 41.1 and 41.4, Article 42.1, Articles 55.1 and 55.2, Article 64.1 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Nadiia Kopylova regarding the compliance (constitutionality) of the provisions of Article 14².1, Article 279¹.5 of the Code of Ukraine on Administrative Offenses with the Constitution of Ukraine.

It is claimed that the provisions of Article 14².1, Article 279¹.5 of the Code do not comply with Article 59, Article 61.2, Article 62.3 of the Constitution of Ukraine.

The subject of the right to constitutional complaint notes that “the presence of a legal mechanism, such as bringing vehicle owners to liability, even if they have not committed an administrative offense, levels the essence of constitutional rights and freedoms of individual legal liability, since it leads to the fact that they become declarative and devoid of a real protection mechanism.”

– **the case upon the constitutional complaint** of Taras Zaiets concerning the compliance (constitutionality) of the provisions of Articles 8.4 and 8.5.4, Articles 9.1 and 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 the Status of Judges” of June 2, 2016 No. 1402–VIII with the Constitution of Ukraine.

The subject of the right to constitutional complaint believes that, provided for by the provisions of Article 88.3 of Law No. 1402, possibility of appealing against the decision of the High Qualifications Commission of Judges of Ukraine based on the results of a qualification assessment, solely, on formal grounds, limits his constitutional right to judicial protection and the right to appeal against the decision of the High Qualifications Commission of Judges Ukraine as a subject of power, which contradicts the provisions of Articles 8, 55, Articles 124.1 and 124.3 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Alona Zabara regarding the compliance (constitutionality) of the provisions of Article 14².1 of the Code of Ukraine on Administrative Offenses with the Constitution of Ukraine.

The complainant considers that the provisions of Article 14².1 of the Code, applied in the final court decision in her case, i.e. the Decision of the Third Administrative Court of Appeal of August 5, 2020, contradict Articles 22, 24, 61, 62, 129 of the Constitution of Ukraine, as they provide for administrative liability of individuals who have not committed an administrative offense.

– **the case upon the constitutional complaint** of Joint Stock Company “The State Savings Bank of Ukraine” regarding the constitutionality of the provision of the first sentence of Article 1050.1 of the Civil Code of Ukraine.

The Bank notes that “both at the time of concluding the credit agreement and during its execution, there was legitimate expectations of receiving interest for the use of credit funds until the day the credit was repaid. At the same time, such legitimate expectations were not related to the conscientiousness of the borrower’s behaviour (timely or untimely repayment of the credit). When concluding a credit agreement with a borrower, the Bank expected to receive interest by the time the borrowed amount was credited to its bank account, and in case of delay, to receive interest on the credit and the amount of money provided for in Article 625 of the Civil Code of Ukraine”.

Summing up the arguments set forth in the constitutional complaint, the Bank notes that the prescription of the first sentence of Article 1050.1 of the Civil Code of Ukraine “restricts the Borrower (after the date of a credit repayment) to receive interest on credits <...>, as a result of which the Borrower was unlawfully deprived of the property right acquired in accordance with the law (Article 41 of the Fundamental Law), its right to entrepreneurial activity, which is not prohibited by the law (Article 42 of the Constitution of Ukraine), is limited, and therefore, this article of the Civil Code of Ukraine is unconstitutional.”

The Bank asks to review the impugned provision of the Civil Code of Ukraine for compliance with the provisions of Articles 8.1 and 8.2, Article 13.4, Article 19.1, Articles 41.1, 41.2 and 41.4, Article 42.1 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Serhii Polishchuk regarding the constitutionality of Article 16³.4 of the Law of Ukraine “On Social and Legal Protection of Servicemen and Members of Their Families” of December 20, 1991 No. 2011–XII.

The subject of the right to constitutional complaint believes that these provisions of the Law do not comply with Article 3, Articles 8.1 and 8.2, Article 17.5, Article 21, Articles 22.2 and 22.3, Article 24.1, Article 46.1, Article 64.1 of the Constitution of Ukraine, as they violate the right to social protection, the principle of equality before the law; do not provide military personnel and persons dismissed from military service with equal and appropriate conditions for social protection; narrow the scope and content of the existing rights of these persons through the establishment of discriminatory conditions under which certain persons are limited by the time period for receiving a lump-sum allowance.

– **the case upon the constitutional complaint** of Oleksandr Krotiuk regarding the constitutionality of the provisions of Article 284.1.4 of the Code of Criminal Procedure of Ukraine.

The author of the complaint believes that the impugned provision of the Code does not comply with Articles 62.1 and 62.2 of the Constitution of Ukraine in a systemic relationship with Article 8.1, since “it violates the presumption of innocence of a person, allowing the criminal proceedings against a suspect or accused to be closed without... proper proof and establishment of the fact of the initial commission of the relevant act by a person, as well as... without consent to such closure by the person, in comparison with the cases of closure of criminal proceedings, carried out in accordance with the requirements of paragraph 1 of part two and part eight of Article 284 of the Code of Criminal Procedure of Ukraine”.

– **the case upon the constitutional complaint** of Oleksii Abramovych regarding the constitutionality of the provisions of Article 40.2.2 of the Housing Code of the Ukrainian SSR.

According to O.Abramovych, as a result of the application of the impugned provision of the Code by Sumy Court of Appeal, he was discriminated against the grounds of the place of residence, as a result of which his constitutional right to housing guaranteed by Article 47.2 of the Constitution of Ukraine was violated.

– **the case upon the constitutional complaint** of Nataliia Linenko regarding the constitutionality of Article 485 of the Customs Code of Ukraine.

According to the complainant, Article 485 of the Code does not comply with Articles 41, 48, 61 of the Constitution of Ukraine.

– **the case upon the constitutional complaint** of Mykola Kostina regarding the constitutionality of a separate provision of paragraph 26 of Section VI “Final and Transitional Provisions” of the Budget Code of Ukraine.

The complainant considers that the impugned provision of the Code does not comply with the provisions of Articles 8.1 and 8.2, Article 22.3, Article 46.1 of the Constitution of Ukraine, as it narrows the content and the scope of previously established state guarantees of social protection for citizens affected by the Chernobyl catastrophe, and makes the implementation of these social guarantees dependent on the available financial budgetary resources, thereby violating the principle of the rule of law established by the Constitution.

– **the case upon the constitutional complaint** of Ihor Hubko regarding the constitutionality of a separate provision of Article 361.5.1 of the Code of Administrative Procedure of Ukraine.

The author of the complaint believes that the impugned provision, namely the wording “if the court’s decision has not yet been executed”, contradicts the provisions of Article 1, Article 3.2, Article 6, Articles 8.1 and 8.2, Article 9.1, Article 21, Articles 22.2 and 22.3, Article 24.1, Articles 55.1, 55.2 and 55.4, Articles 56, 64, Article 129.1,

Article 151¹ and Article 152.3 of the Constitution of Ukraine, as it violates his right to compensation for moral and material damage, caused by the law, which is recognised as unconstitutional, introduces discrimination against certain categories of pensioners in terms of their possible exercise of this right, and also violates the complainant's right to effective judicial protection.

– **the case upon the constitutional complaint** of Volodymyr Zhydenko regarding the conformity with the Constitution of Ukraine (constitutionality) of certain provisions of Article 2 of the Law of Ukraine “On Measures for Legislative Support of Reforming the Pension System”.

The subject of the right to constitutional complaint believes that the restrictions on the maximum amount of pensions established in the impugned provisions of the Law “violate his human rights guaranteed by the Constitution of Ukraine, the content and scope of which cannot be narrowed (Article 22 of the Constitution of Ukraine): the right to receive a guarantee of social protection on the basis of Article 17 of the Constitution of Ukraine for citizens of Ukraine serving in the Armed Forces of Ukraine and other military formations, as well as members of their families; an individual's right to pension which is guaranteed by Article 46 of the Constitution of Ukraine”.

– **the case upon the constitutional complaint** of Roman Truba regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 11.1.2 of the Law of Ukraine “On the State Bureau of Investigation”, subparagraphs 2.1 and 2.2 of paragraph 3 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Some Laws of Ukraine to Improve the Activities of the State Bureau of Investigation”.

In complainant's opinion, the provisions of Article 11.1.2 of the Law No. 794 and the first and subparagraphs 2.1 and 2.2 of paragraph 3 of Section II “Final and Transitional Provisions” of the Law No. 305 are such as to violate and limit his constitutional rights to work and access to the civil service; expand the powers of the President of Ukraine regarding the appointment and dismissal of heads of central executive bodies, as defined by the Constitution of Ukraine; do not correspond to the principle of legal certainty and the principle of irreversibility of action in time of normative legal acts.

– **the case upon the constitutional complaint** of Serhii Trutniev regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 14².1 and 14².3, Article 279³.1 of the Code of Ukraine on Administrative Offenses. The author of the complaint notes that his constitutional rights have been violated, namely: “the right to inadmissibility of narrowing the content and the scope of existing rights and freedoms when adopting new laws or amending the existing ones (Article 22.3 of the Constitution of Ukraine); the right to individualisation of legal liability is violated (Article 61.2 of the Constitution of Ukraine); the right to receive a substantiated indictment, which is based on legally obtained evidence and which is not based on assumptions, and in case of doubts regarding the proof of guilt, to receive their interpretation in his/her favour (Article 62.3 of the Constitution of Ukraine); the

right regarding the inadmissibility of restrictions on human rights, except for the cases provided for by the Basic Law of Ukraine (Article 64.1)”.

– **the case upon the constitutional complaint** of Volodymyr Soloviov regarding the constitutionality of certain provisions of Section 3 of the Law of Ukraine “On Amendments to the Code of Economic Procedure of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts” of October 3, 2017 No. 2147–VIII.

The author of the complaint claims that the different approach in the interpretation of the impugned provisions of the Code in the process of application by the Supreme Court violates his constitutional rights “to judicial protection and to cassation appeal of the court decision”, provided for by Article 55.1, Article 129.2.8 of the Constitution of Ukraine, as well as the right of ownership, the inviolability of which is guaranteed by Article 41.4 of the Basic Law of Ukraine.

– **the case upon the constitutional complaint** of Antonina Bolotnikova on the constitutionality of the provisions of Article 86.15.6 of the Law of Ukraine “On the Prosecutor’s Office” of October 14, 2014 No. 1697-VII as amended, Article 2 of the Law of Ukraine “On Measures on Legislative Support of the Pension System Reform” of July 8, 2011 No. 3668-VI.

According to A. Bolotnikova, the impugned provisions of Law No. 1697 and Law No. 3668 “violate her rights to property and social protection, guaranteed by Articles 41.1, 41.4 and 41.5, Article 46.1 of the Constitution of Ukraine, and also contradict other norms of the Basic Law of Ukraine, namely, Article 8.1, violating the principles of the rule of law; Articles 17.1, 17.3 and 17.5 on ensuring social protection of citizens of Ukraine, including law enforcement officers who protect the sovereignty and territorial integrity of Ukraine; Articles 22.2 and 22.3, since these laws allowed the narrowing of the content and the scope of existing rights, limiting them, thus violating the principle of the rule of law, the content and scope of the prosecutor’s independence in the context of Article 126.1; Article 24.1 and 24.2 on the equality of constitutional rights and freedoms, the prohibition of privileges or restrictions.”

– **the case upon the constitutional complaint** of the Representation ANDRITZ HYDRO GmbH on the constitutionality of paragraph 120¹.1 of Article 120¹ of the Tax Code of Ukraine.

The author of the complaint claims that the penalties provided for by the impugned provisions of the Code, applied to cases of late registration of tax invoices, are clearly excessive and violate the principle of the rule of law. Also, in complainant’s opinion, disproportionate fines violate the constitutional right to property, and the impugned provisions of the Code are the manifestation of interference in the peaceful possession of one’s own property.

– **the case upon the constitutional complaint** of Roman Unukovych on the constitutionality of a specific provision of Article 204³.1.2 of the Code of Ukraine on Administrative Offenses.

According to the author of the complaint, such a type of sanction as a fine with confiscation of the transported goods has no alternative and “does not leave the court with the opportunity to reduce the measure of administrative liability specified in the article, decide on the application of confiscation partially or not apply it at all, taking into account the specific details of each case and mitigating circumstances, and obliges the court to apply confiscation in each case of evidence of an individual’s guilt in committing this administrative offense”; “confiscation is applied to the individual’s property belonging to him/her, including on legal grounds, therefore, such confiscation is incompatible with the inviolability of the right of private property established by Article 41.4 of the Constitution of Ukraine.”

The subject of the right to constitutional complaint argues that the mandatory application of confiscation does not meet the criteria of fairness, proportionality, and, therefore, the impugned separate provision of Article 204³.1.2 of the Code, namely the wording “with confiscation of such goods” contradicts the provisions of Article 8.1, Articles 41.1, 41.4 and 41.6, Article 64.1 of the Basic Law of Ukraine.

– **the case upon the constitutional complaint** of Hanna Raikun regarding the constitutionality of certain provisions of Article 2 of the Law of Ukraine “On Measures to Provide Legislative Support for the Reform of the Pension System” of July 8, 2011 No. 3668-VI, the first sentence of Article 86.15.6 of the Law of Ukraine “On the Prosecutor’s Office” of October 14, 2014 No. 1697-VII.

According to the author of the complaint, the limitation of the maximum amount of pension for employees of the prosecutor’s office, established by the impugned provisions of Law No. 3668, Law No. 1697, violates her rights to property and social protection, guaranteed by Articles 41.1, 41.4 and 41.5, Article 46.1 of the Constitution of Ukraine, and also contradicts other norms of the Basic Law of Ukraine, namely, Article 8.1, Articles 17.1 and 17.3, Articles 22.2 and 22.3, Articles 24.1 and 24.2, Articles 41.1, 41.4 and 41.5, Article 46.1, Article 58.1, Article 64.1.

– **the case upon the constitutional complaint** of Liudmila Solomakha regarding the constitutionality of the provisions of Article 142.3 of the Law of Ukraine “On the Judiciary and the Status of Judges” of June 2, 2016 No. 1402-VIII.

According to the author of the complaint, the impugned provisions of Law No. 1402 on the procedure for calculating the monthly life allowance “by its very nature significantly violate the guarantees of the independence of judges, which were previously determined by the law”, that is, the corresponding guarantees established by the Law of Ukraine “On the Judicial System and the Status of Judges” of July 7, 2010 No. 2453-VI as amended.

L.Solomakha argues that the application of the provisions of Article 142.3 of Law No. 1402 in the final court decision in her case caused the following consequences: “my right, as a retired judge, to adequate material and social security, which is an element of guarantees of a judge’s independence, was violated”, “my right to receive a monthly lifetime pension in retirement in the amount of 90 percent of the judicial remuneration of a judge working in a relevant position, without limiting the maximum amount of monthly lifetime monetary maintenance, was violated”, “a

significant decrease in the amount of monthly lifetime monetary maintenance in retirement led to a violation of the right to own, use and dispose of one's property, which is guaranteed by Article 41 of the Constitution of Ukraine”.

– **the case upon the constitutional complaint** of Ihor Melnychuk regarding the constitutionality of the first sentence of Article 86.15.6 of the Law of Ukraine “On the Prosecutor’s Office” of October 14, 2014 No. 1697-VII.

The author of the complaint believes that “the introduction by the legislator of the limitation of the maximum amount of pension for prosecutors led to the narrowing of his right to social protection, guaranteed by Article 46 of the Constitution of Ukraine, and also contradicts other norms of the Basic Law of Ukraine”.

2.3. REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS

REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS UPON CONSTITUTIONAL PETITIONS

In 2021, 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 3 rulings on refusal to initiate constitutional proceedings in cases upon constitutional applications in full (2) and in part (1), in particular, on the grounds of:

- non-compliance of the application with the requirements provided by law (2);
- invalidity of the act (its separate provisions) in respect of which the issue of compliance with the Constitution of Ukraine was raised (1);

In 2021, the Constitutional Court of Ukraine adopted 3 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 – invalidity of the act (its separate provisions), in respect of which the issue of compliance with the Constitution of Ukraine was raised).

In addition, one decision of the Constitutional Court of Ukraine in case upon the constitutional petition indicated the termination of constitutional proceedings in the part of the constitutional petition on the grounds of non-compliance of the application with the requirements provided by law.

REFUSAL TO INITIATE CONSTITUTIONAL PROCEEDINGS UPON CONSTITUTIONAL COMPLAINTS

In the period from January 1 to December 31, 2021, the Constitutional Court of Ukraine adopted 162 rulings refusing to initiate constitutional proceedings in cases upon constitutional complaints, including 1 adopted by the Senates and 161 – by the Boards of Judges.

Most often, Boards of Judges and the Senates 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 55.2.6 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 applied).

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

In the period from January 1 to December 31, 2021, the Constitutional Court of Ukraine adopted 10 decisions. No opinions were provided.

In the decisions of the Constitutional Court of Ukraine of April 7, 2021 No. 1-r(II)/2021, of September 16, 2021 No. 6-r(II)/2021 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 decision; in the Decision of the Constitutional Court of Ukraine of April 7, 2021 No. 1-r(II)/2021 the procedure for applying the provisions of the laws of Ukraine was also determined and their expiration was postponed. In the Decision of the Constitutional Court of Ukraine of July 21, 2021 No. 3-r(II)/2021 the expiration of the provisions of the laws of Ukraine was postponed.

By the Decision of the Constitutional Court of Ukraine of April 7, 2021 No. 1-r(II)/2021, it was determined that the citizens of Ukraine, who are subject to the provisions of the laws of Ukraine, that were declared inconsistent with the Constitution of Ukraine, have the right to compensation for damage caused as a result of their actions. Decision of the Constitutional Court of Ukraine of July 21, 2021 No. 4-r(II)/2021 contains an indication that it does not apply to legal relations that have arisen since the entry into force of Section XI.8 of “Final and Transitional Provisions” of the Law of Ukraine “On the National Police” of July 2, 2015 No. 580-VIII and remain in effect after the adoption of this Decision by the Constitutional Court of Ukraine.

By 6 decisions of the Constitutional Court of Ukraine, the disputed provisions of the laws of Ukraine were declared to be inconsistent or in line with the Constitution of Ukraine, and therefore, the above decisions of the Constitutional Court of Ukraine do not require recommendations on their execution.

ON THE STATE OF EXECUTION OF CONSTITUTIONAL COURT DECISION ADOPTED IN 2021 IN CASES UPON CONSTITUTIONAL PETITIONS

DECISION No. 1-r/2021 of July 14, 2021

Adopted in the case upon the constitutional petition of 51 People’s Deputies of Ukraine on the constitutionality of the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as a State Language”.

The operative part of the Decision states:

«1. To declare as constitutional the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as a State Language” of April 25, 2019 No.2043–VIII with subsequent amendments”.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 2-r/2021 of July 14, 2021

Adopted in the case upon the constitutional petition of 47 People's Deputies of Ukraine on the constitutionality of Article 6.6 of the Law of Ukraine "On Remuneration for Work" of March 24, 1995 No 108/95-BP as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774-VIII of Article 96.6 of the LaboUr Code of Ukraine, as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774-VIII (on the minimum wage (tariff rate)).

The operative part of the Judgment states:

"1. To declare as constitutional Article 6.6 of the Law of Ukraine "On Remuneration for Work" of March 24, 1995 No 108/95-BP as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774-VIII of Article 96.6 of the LaboUr Code of Ukraine, as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" of December 6, 2016 No. 1774-VIII".

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 3-r/2021 of December 21, 2021

Adopted in the case upon the constitutional petition of 47 People's Deputies of Ukraine on the constitutionality of the certain provisions of Article 6 of the Law of Ukraine "On Television and Radio Broadcasting", Articles 15, 15¹, 26 of the Law of Ukraine "On Cinematography".

The operative part of the Judgment states:

"1. To declare as constitutional the provisions of the first sentence of paragraph 10 of Article 6.2 of the Law of Ukraine "On Television and Radio Broadcasting" of December 21, 1993 No. 3759-XII as amended, Article 15.3.4, Article 15.4.4, Article 15.6, Article 15.7, 151.1, the second sentence of Article 151.2 of the Law of Ukraine "On Cinematography" of 13 January 1998 No. 9/98-VR as amended".

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

ON THE STATUS OF EXECUTION OF THE CONSTITUTIONAL COURT DECISION ADOPTED IN 2021 IN THE CASES UPON CONSTITUTIONAL COMPLAINTS

Decision No. 1-r(II)/2021 of April 7, 2021

Adopted in the case upon the constitutional complaint of Oleksandr Diachenko and other citizens of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of Section I.4.13 of the Law of Ukraine "On Amending and Recognising Some Legislative Acts of Ukraine as invalid" of December 28, 2014 No. 76-VIII.

The operative part of the Judgment states:

"1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional) Article 54.3 of the Law of Ukraine "On the Status and Social

Protection of Citizens Affected by the Chernobyl Catastrophe” of February 28, 1991 No. 796-XII as amended by the Law of Ukraine “On Amending and Recognising Some Legislative Acts of Ukraine as invalid” of December 28, 2014 No. 76-VIII regarding the authorisation of the Verkhovna Rada of Ukraine of the Cabinet of Ministers of Ukraine to determine by their acts the minimum amounts of a disability pension resulting from an injury or illness, and a pension in connection with the loss of a breadwinner due to the Chernobyl catastrophe.

2. *Article 54.3 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” ... is declared unconstitutional, shall cease to be valid three months after the adoption of this Decision by the Constitutional Court of Ukraine.*

3. *The Verkhovna Rada of Ukraine, within three months from the date this Decision is adopted by the Constitutional Court of Ukraine, shall bring the normative regulation established by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” of February 28, 1991 No. 796-XII as amended by the Law of Ukraine “On Amending and Recognising Some Legislative Acts of Ukraine as invalid” of December 28, 2014 No. 76-VIII regarding the authorisation of the Cabinet of Ministers of Ukraine by the Verkhovna Rada of Ukraine to determine by their acts the minimum amounts of a disability pension resulting from an injury or illness, and a pension in connection with the loss of a breadwinner due to the Chernobyl catastrophe to determine by their acts the minimum amounts of a disability pension resulting from an injury or illness, and a pension in connection with the loss of a breadwinner due to the Chernobyl catastrophe, in accordance with the Constitution of Ukraine and this Decision.*

In case of failure to bring the normative regulation established by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” ... in accordance with the Constitution of Ukraine and this Decision three months after the adoption of this Decision by the Constitutional Court of Ukraine, Article 54.4 “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” of February 28, 1991 № 796-XII as amended by the Law of Ukraine «On Amendments to the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” of June 6, 1996 № 230/96 – VR is to be applied:

“In all cases, the size of pensions for disabled people, in respect of which a connection with the Chernobyl catastrophe has been established, shall not be lower than:

for disability group I – 10 minimum old-age pensions;

for disability group II – 8 minimum old-age pensions;

for disability group III – 6 minimum old-age pensions;

disabled children – 3 minimum old-age pensions”.

4. *Citizens of Ukraine to which Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” of February 28, 1991 No. is applicable, have the right to compensation for the damage they have suffered as a result of application Article 54.3 of this Law as amended by the Law of*

Ukraine “On Amending and Recognising Some Legislative Acts of Ukraine as invalid” of December 28, 2014 No. 76-VIII”.

On June 29, 2021, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine “On the Status and Social Protection of Citizens Affected as a Result of the Chernobyl Catastrophe” on increasing the level of pension for certain categories of persons” under No. 1584–IX, which amended, in particular, Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected as a Result of the Chernobyl Catastrophe” of February 28, 1991 No. 796-XII (hereinafter referred to as the Law No. 796).

In particular, according to the Law No. 1584, Article 54.3 of the Law No. 796 set forth in a new version. It has been established that in all cases the size of the disability pension resulting from an injury or illness due to the Chernobyl catastrophe cannot be lower: for disability group I – 6,000 hryvnias; for disability group II – 4,800 hryvnia; for disability group III – 3,700 hryvnias; for disabled children – UAH 3,700 hryvnias. Article 54.3 of the Law No. 796 was supplemented with Article 54.4 and Article 54.5 (it was established that the pension amounts provided for in Article 54.3, starting from March 1, 2022, are indexed annually in the manner prescribed by the Cabinet of Ministers of Ukraine, taking into account the increase factor, which is determined in accordance with Articles 42.2.2, 42.2.3 of the Law of Ukraine “On Compulsory State Pension Insurance”, the procedure for assigning a disability pension due to an injury or illness, and a pension in connection with the loss of a breadwinner due to the Chernobyl catastrophe is determined by the Cabinet of Ministers of Ukraine).

The Law No. 1584 was published in the “Holos Ukrainy” newspaper on July 1, 2021 and entered into force on January 1, 2022, except for Section I.2 (amendments to Article 54 of the Law No. 796) and Section II.2 of “Final and Transitional Provisions” of the Law No. 1584 (in relation to the payment of the monthly state targeted benefit to the pension), which entered into force on July 1, 2021.

The Verkhovna Rada of Ukraine changed the normative regulation established by the provisions of Article 54 of the Law No. 796 and brought them into line with the Decision.

DECISION No. 2-r(II)/2021 of April 28, 2021

Adopted in the case upon the constitutional complaint of the Public Joint-Stock Company Joint-Stock Commercial Bank INDUSTRIALBANK regarding the constitutionality of Article 13.3, Article 16.3 of the Civil Code of Ukraine.

The paragraph 1 of the operative part of the Decision states:

“1. To declare as constitutional Article 13.3, Article 16.3 of the Civil Code of Ukraine”.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 3-r(II)/2021 of July 21, 2021

Adopted in the case upon the constitutional complaint of Olena Odintsova on the constitutionality of certain provisions of the second paragraph of Article 471 of the Customs Code of Ukraine.

The operative part of the Decision states:

«1. To declare as inconsistent with the Constitution of Ukraine (unconstitutional) certain provisions of the second paragraph of Article 471 of the Customs Code of Ukraine, namely “and if the direct objects of the offense are goods, the movement of which across the customs border of Ukraine is prohibited or restricted by the legislation of Ukraine, – also the confiscation of these goods“.

2. Separate provisions of the second paragraph of Article 471 of the Customs Code of Ukraine, namely “and if the direct objects of the offense are goods, the movement of which across the customs border of Ukraine is prohibited or restricted by the legislation of Ukraine, – also the confiscation of these goods“, which declared unconstitutional, shall cease to be valid six months from the date of adoption of this Decision by the Constitutional Court of Ukraine».

In paragraph 5 of the motivating part of the Decision, it is determined that *“in order to prevent violation of the customs interests of Ukraine and its customs security, the issue of administrative liability for an administrative offense, defined by Article 471 of the Customs Code of Ukraine, cannot remain without proper legal regulation and, therefore, the Constitutional Court of Ukraine considers it necessary to postpone the loss of effect of these provisions of the Customs Code of Ukraine for six months since the day of adopting the decision on their unconstitutionality”.*

On September 14, 2021, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine "On Amendments to the Customs Code of Ukraine on Administrative Liability of Citizens for Violating Customs Rules" (registration No. 6051), which provides for amendments, in particular, to Article 471 of the Customs Code of Ukraine: *“non-declaration of goods (except for currency values) subject to prohibitions and/or restrictions established by the law for import into the customs territory of Ukraine or export outside this territory, and transported by citizens, –*

incurs a fine equal to three hundred tax-free minimum incomes of citizens with or without confiscation of such goods”.

In addition, in the note to Article 471 of the Code, it is suggested to define that non-declaration is considered to be the non-declaration by a citizen in the established form of accurate and reliable information, the list of which is defined by the Code, about goods moved (sent) by such a citizen across the customs border of Ukraine (including when passing (passage) along the canal marked with green symbols (“green corridor”).

That is, the Draft provides for a change in the normative regulation established by Article 471 of the Code, some provisions of which were under review by the Constitutional Court of Ukraine.

The Draft is included in the agenda of the sixth session of the Verkhovna Rada of Ukraine of the ninth convocation on November 30, 2021.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 4-r(II)/2021 of July 21, 2021

Adopted in the case upon the constitutional complaint of Bohdan Bivalkevych on the constitutionality of Section XI.8 of “Final and Transitional Provisions” of the Law of Ukraine “On the National Police”.

The operative part of the Decision states:

«1. To declare Section XI.8 of “Final and Transitional Provisions” of the Law of Ukraine “On the National Police” of July 2, 2015 No. 580-VII to be inconsistent with the Constitution of Ukraine (unconstitutional).

...

3. The Decision of the Constitutional Court of Ukraine shall not be applied to legal relations that have arisen since the entry into force of Section XI.8 of “Final and Transitional Provisions” of the Law of Ukraine “On the National Police” of July 2, 2015 No. 580-VII and continues to exist from the date of adoption of this Decision by the Constitutional Court of Ukraine”.

Paragraph 7 of the motivating part of the Decision states that, choosing the approach to non-extension of the Decision to legal relations that have arisen since the entry into force of the Law No. 580 and continue to exist after the Constitutional Court of Ukraine adopted this Decision, during deliberation of this case “the Constitutional Court of Ukraine takes into account the need to respect for the balance between socially significant interests in maintaining the legitimacy of the establishment of such an executive body as the police, and the private interests of the subject of the right to a constitutional complaint. Choosing a different approach in this case would lead to a revision of the legal relations on dismissal not only of Bivalkevych B.V., but also of other police officers, and legal relations on recruitment of police officers, which would violate the rule of law and will call into question the legitimacy of police”.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 5-r(II)/2021 of July 21, 2021

Adopted in the case upon the constitutional complaint of Anatoliiy Kremenchutskyi and Vladyslav Pavlyk on the constitutionality of Article 294.10 of the Code of Ukraine on Administrative Offenses.

The operative part of the Decision states:

“1. To declare as constitutional the provisions of Article 294.10 of the Code of Ukraine on Administrative Offenses”.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 6-r(II)/2021 of September 16, 2021

Adopted in the case upon the constitutional complaints of Dmytro Krupko on the compliance of Articles 81.1 and 82.1 of the Criminal Code of Ukraine with the Constitution of Ukraine, Volodymyr Kostin, Oleksandr Melnychenko on the compliance of Article 82.1 of the Criminal Code of Ukraine with the Constitution of Ukraine and upon the constitutional complaint of Viktor Hohin on the compliance of Article 81.1 of the Criminal Code of Ukraine with the Constitution of Ukraine (the case regarding review of the sentence of a person sentenced to life imprisonment).

The operative part of the Decision states:

«1. To declare Article 81.1, Article 82.1 of the Criminal Code of Ukraine in that they make it impossible to apply them to persons who are sentenced to life imprisonment to be inconsistent with the Constitution of Ukraine (unconstitutional).

2. To oblige the Verkhovna Rada of Ukraine to immediately bring the normative regulation established by Articles 81, 82 of the Criminal Code of Ukraine in line with the Constitution of Ukraine and this Decision.»

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

DECISION No. 7-r(II)/2021 of October 20, 2021

Adopted in the case upon the constitutional complaint of Private Joint-Stock Company “Chernihivoblbud” on the compliance of the provisions of subparagraph “b” of Article 14.3.1 of the Law of Ukraine “On Ensuring the Realisation of Housing Rights of Dormitory Residents”.

The operative part of the Decision states:

«1. To declare subparagraph “b” of Article 14.3.1 of the Law of Ukraine “On Ensuring the Realisation of Housing Rights of Dormitory Residents” of September 4, 2008 № 500–VI as amended to be inconsistent with the Constitution of Ukraine (unconstitutional).

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of the Decision.

As of December 31, 2021, the Verkhovna Rada of Ukraine has not adopted any acts related to the adoption of decisions by the Constitutional Court of Ukraine until January 1, 2021, namely: No. 25-rp/2009 of October 7, 2009, No. 23-rp/2010 of December 22, 2010, No. 6-rp/2011 of June 16, 2011, No. 2-rp/2014 of March 14, 2014, No. 2-rp/2016 of June 1, 2016, No. 8-r/2018 of October 11, 2018, No. 12-r/2018 of December 18, 2018, No. 13-r/2018 of December 20, 2018.

In 2021, the Verkhovna Rada of Ukraine adopted laws of Ukraine that amended or left unchanged the regulations established by the provisions of the laws of Ukraine, which were declared inconsistent with the Constitution of Ukraine (unconstitutional), in particular in accordance with the decisions of the Constitutional Court of Ukraine No. 6-r/2018 of July 17, 2018, No. 1-r(II)/2019 of April 25, 2019, No. 2-r/2020 of February 18, 2020, No. 4-r/2020 of March 11, 2020, No.9-r/2020 of August 28 2020, No.11-r/2020 of September 16, 2020.

2.5. ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE REGARDING THE EXERCISE OF CONSTITUTIONAL CONTROL IN 2021: SPECIFIC CONCLUSIONS

Constitutional control, as an important social and state function that ensures the dynamic development and internal stability of society, correlates with the nature of social relations and the basic principles and goals of the Constitution of Ukraine. To resolve the issue of compliance of the Law with the Constitution of Ukraine, the

Constitutional Court of Ukraine creates legal positions in its practice, revealing their constitutional meaning based on the analysis of fundamental constitutional principles. The Constitutional Court of Ukraine in its decisions adopted by virtue of the Basic Law of Ukraine is guided by the fundamental principles of justice and legal certainty, clarity and unambiguity of the rule of law, balance between the public interests of the state and the private interests of society.

REGARDING THE SUBJECT MATTER OF CONSTITUTIONAL REVIEW

The following norms were most often examined in constitutional proceedings:

- challenge in appeal and cassation proceedings against court decisions (mainly in cases of minor complexity in administrative proceedings and in minor cases in civil proceedings) and individual procedural rulings;
- limiting the pension to the maximum amount, the procedure for recalculating the pension (in particular, for military personnel, including those who participated in the liquidation of the consequences of the Chernobyl catastrophe, prosecutors), the appointment and payment of a lump-sum cash payment (including in connection with a change in the disability group);
- review of court decisions due to newly discovered or exceptional circumstances.

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

- challenge in appeal and cassation proceedings against decisions of investigating judges, the application of measures, termination of criminal proceedings, the revision of the term of life imprisonment;
- compensation from an enterprise, organisation, institution of average earnings for the time of delay in calculation upon dismissal of an employee (exemption from liability for breach of obligation due to force majeure);
- the status of judges (for conducting qualification assessment, appealing against decisions of the High Council of Justice, the procedure for recalculating the monthly life allowance of a retired judge);
- the procedure for reforming the prosecution authorities (in particular, the legislatively established attestation of prosecutors);
- cases of administrative offenses (regarding the administrative responsibility of persons who are owners of vehicles, including the size and volume of sanctions imposed);
- the consequences of the transfer of ownership of the subject of mortgage to third parties (on the transfer of all rights and obligations of the mortgagor to the person to whom the ownership of the subject of mortgage has passed);
- court fee (on the obligation to pay a court fee and the conditions for exemption (benefits) from paying a court fee, including when appealing decisions on an administrative offense, in cases of appeal, in particular, of combatants and others).

An analysis of the content of constitutional complaints demonstrates that individuals applied to the Constitutional Court of Ukraine with applications mainly on the exercising the right to judicial review (in particular, in cassation proceedings in minor cases in civil proceedings), appealing against rulings of investigating judges in

an appeal procedure, review of court decisions due to newly discovered or exceptional circumstances, payment of a court fee. A significant number of constitutional complaints concerned social issues in order to protect the rights established in legislative acts that have changed, in particular, on social (pension) security for certain categories of citizens (military personnel, including those who participated in the liquidation of the consequences of the Chernobyl catastrophe, prosecutors).

Legal entities in their constitutional complaints raised the issue of compliance with the Constitution of Ukraine of the provisions of laws relating to the legal regulation of economic activity, in particular on taxation, insurance, the procedure and conditions for acquiring property rights, the procedure for resolving labor disputes, as well as on issues of commercial litigation (designating a case as of minor complexity, the possibility of appealing against individual court decisions, in particular, appealing against procedural rulings, the possibility of appealing against decisions of an arbitration court, as well as the procedure for their execution), etc.

A number of constitutional complaints raised issues of compliance with the Constitution of Ukraine (constitutionality) of subordinate legislation, in particular, issued by the President of Ukraine, the Cabinet of Ministers of Ukraine, despite the fact that the Constitutional Court of Ukraine has repeatedly noted that a constitutional complaint is filed exclusively on the compliance of the law of Ukraine (its separate provisions), and not another act, with the Constitution of Ukraine.

III. EXTRAJUDICIAL ACTIVITIES

3.1. EVENTS AND ACTIVITIES

In 2021 the Constitutional Court of Ukraine organised and held a number of events dedicated to current issues of constitutional jurisdiction, which were attended by leading scholars, European experts, government officials, representatives of international organisations and foundations, media and the public.

The year 2021 was marked by several jubilee dates both for the state on the whole and the Constitutional Court of Ukraine in particular, including the 25th anniversary of the Constitution of Ukraine, the 25th anniversary of the Constitutional Court of Ukraine and the 30th anniversary of the Independence of Ukraine.

The body of constitutional control of Ukraine was actively engaged in celebration of these events and held a number of events on their occasion including international and national conferences, as well as issued a number of publications, informational leaflets etc.

On 14-24 June the „Constitutional Week“ was held dedicated to 25th anniversary of the Constitution of Ukraine. Within its framework, three regional and one international conferences were held:

- a scientific and practical conference *“Constitutional Values in Official and Academic Doctrines“* during which the participants discussed crucial issues of constitutional justice at the current stage, particularly on the implementation of the access to the body of constitutional jurisdiction, the protection of the fundamental human and citizen’s rights and freedoms.



The scientific and practical conference “Constitutional Values in Official and Academic Doctrines“ (14 June 2021)

- a scientific and practical conference *“The Role of Constitutional Justice Bodies in the Human Rights Protection Mechanism“*. The aim of the conference was to discuss

crucial mechanisms of the effective activities of constitutional jurisdiction and access to constitutional justice.



The scientific and practical conference “The Role of Constitutional Justice Bodies in the Human Rights Protection Mechanism” (16 June 2021)

- a scientific and practical conference *“The Principle of Separation of Power and its Guarantee by Constitutional Justice Bodies”*. Its participants analysed the issues of constitutional foundations of the functioning of the state power in Ukraine.



The scientific and practical conference “The Principle of Separation of Power and its Guarantee by Constitutional Justice Bodies” (18 June 2021)

- final international conference *“The Constitutional of 1996: Ukraine within the Framework of European Constitutionalism”*



Final international conference “The Constitutional of 1996: Ukraine within the Framework of European Constitutionalism” (24 June 2021)

During this conference, Deputy Chairman of the Constitutional Court of Ukraine **Serhiy Holovaty** said that on 28 June 1996 at 9.18 a.m. in the session hall of the Verkhovna Rada of Ukraine there was an outburst of emotions – the Constitution of the Independent Ukraine was adopted. “The session lasted for almost 24 hours. The epoch event took place – the Constitution of the Independent Ukraine was adopted and therefore the independent Ukrainian State was constitutionally legalised“, said Serhiy Holovaty.



International Conference “The Constitutional of 1996: Ukraine within the Framework of European Constitutionalism” (24 June 2021)

Congratulating the participants of the conference on this important event in the life of Ukraine, President of the European Commission “For Democracy through Law” (Venice Commission) **Gianni Buquicchio** emphasised a positive role of the

Constitutional Court of Ukraine in the execution of judgments of the European Court of Human Rights. He noted that many decisions of the Constitutional Court of Ukraine are in line with the high standards of the common heritage of the European constitutionalism.



International Conference “The Constitutional of 1996: Ukraine within the Framework of European Constitutionalism” (24 June 2021)

In his welcome speech, OSCE Project Co-ordinator of Ukraine, Ambassador **Henrik Villadsen** noted that the Constitution of Ukraine represents the hopes of the Ukrainian people and the ideal of society to which Ukraine strives. It is a fundamental part of the life of the people, it is a mirror of the Ukrainian society which reflects both the history of the country as well as the values which it cherishes: human dignity, equality and freedom. The Constitution proclaims to the world that the Ukrainian society is committed to democracy, rule of law and the protection of human rights.



Congratulating the Ukrainian people on this important event, Director of the German Foundation for International Legal Cooperation **Stefan Hülshörster**, noted that 25 years of the Constitution of Ukraine is not a long period, yet enough to make assessment whether the Constitution has become a guarantor of the principles of the rule of law.



The above events were organised by the Constitutional Court of Ukraine in cooperation with the National Academy of Legal Sciences of Ukraine, Yaroslav Mudryi National Law University, National University "Odesa Law Academy", Ivan Franko National University of Lviv, with the support of the OSCE Project Co-ordinator in Ukraine and the German Foundation for International Legal Cooperation (IRZ).



Over 200 participants attended these events. Among them there were judges of the Constitutional Court of Ukraine, former judges of the Constitutional Court of Ukraine, representatives of the bodies of state power of Ukraine, judges of foreign bodies of constitutional jurisdiction, leading domestic and foreign experts as well as representatives of international organisations and foundations.



“The Constitution of Ukraine embodies the ideas of natural law which require the separation of power for ensuring the guarantees of practical implementation of human rights which are one of the core elements of constitutionalism”

***Serhiy Holovaty
Deputy Chairman of the
Constitutional Court of Ukraine***

“The constitutional values are those which appear in the process of interpretation of the Constitution by the Constitutional Court of Ukraine”

***Viktor Kychun
Judge of the Constitutional
Court of Ukraine***

“In every constitutional judgment one should seek for a balance between where judicial restraint ends and judicial activism starts”

***Vasyl Lemak
Judge of the Constitutional
Court of Ukraine***

***“The session of the Verkhovna Rada lasted for almost 24 hours. The epoch event did occur – the Constitution of the Independent Ukraine was approved.
And therefore – the Independent Ukrainian State was constitutionally legalised”***

***Serhiy Holovaty
Deputy Chairman of the
Constitutional Court of Ukraine***



*A collection of materials and theses of the
Constitutional Week events
(Kyiv, 2021, parts I and II)*

Based on the conferences results, two collections dedicated to the events held within the Constitutional Week were published. They include research articles of more than 80 authors.

Thus, conducting three regional online and one international hybrid conference is a good example of a well-coordinated smooth organisation and work in the video-conference format which gives an opportunity for a legal community in conditions of restrictive anti-epidemic measures to discuss the issues of the activity of constitutional justice in the area of strengthening the constitutional foundations of the national statehood, institutes of national statehood, the efficiency of the protection of human and citizen's rights and freedoms.

On the occasion of the 25th anniversary of the Constitution of Ukraine, the Constitutional Court of Ukraine, with the support of the OSCE Project Co-ordinator in Ukraine published a gift edition "*The Constitution of Ukraine*".



The edition contains the official text of the Basic Law of Ukraine as of 1 October 2021 with the official interpretation of its articles by the Constitutional Court of Ukraine.

It includes a list of all Constitutional Court decisions on the official interpretation of the provisions of the Constitution of Ukraine in the current and previous wordings and the legal positions of the Constitutional Court of Ukraine related to its articles.

To mark the 25th anniversary of the Constitutional Court of Ukraine a commemorative medal and a stamp were issued. The medal “25th anniversary of the Constitutional Court of Ukraine“ was issued by the National Bank of Ukraine with a 10 000 circulation. It is 35 mm in diameter and is done out of German silver. The medal’s obverse depicts the small State Coat-of-Arms of Ukraine, with an inscription “Ukraine” under it. In the centre there is a part of the Court’s building with the year of minting – 2021 – indicated below. The medal’s reverse depicts the Court’s logo and below it – the inscriptions: “The Constitutional Court of Ukraine“ and “25 years“.



On the occasion of the 25th anniversary of the foundation of the Constitutional Court of Ukraine, the I Mariupol constitutional forum was initiated by the Constitutional Court of Ukraine with the support of Donetsk regional state administration and Mariupol city council. The topic of the forum was “Human Dignity and Ensuring Human Rights in Conditions of Public Transformations”. The forum became a discussion platform which united representatives of bodies of state power of Ukraine and scholars.





*I Mariupol Constitutional Forum
“Human Dignity and Ensuring Human Rights in Conditions of Public Transformations“
(Mariupol, 13–14 September 2021)*

“The Constitution of Ukraine determines the equality of citizens before the law, equality of people in their dignity and rights”

***Galyna Yurovska,
Judge of the Constitutional
Court of Ukraine***

“Constitutional complaint is a “trigger” which definitely reinforces the efficiency of the national constitutional jurisprudence as a means of legal protection of human rights and freedoms, strengthening the constitutional level of their protection thus raising the standard of ensuring such human rights and freedoms and their observance by the state”

***Viktor Horodovenko
Judge of the Constitutional
Court of Ukraine***

“Laws, according to their content, have to be permeated with the ideas of social justice, freedom and equality and the state has to ensure the mechanism of implementation of equal possibilities”

***Galyna Yurovska,
Judge of the Constitutional
Court of Ukraine***

“When coming into this world, an individual already is possessed of dignity, since it is inherent in him or her by their Nature. An individual possesses natural inborn rights which no one can deprive them of”

***Serhiy Holovaty
Deputy Chairman of the
Constitutional Court of Ukraine***

“The Constitutional Court of Ukraine, proceeding from scientific, legal doctrine of constitutional law, the provisions of the Constitution of Ukraine and international obligations, is implementing the constitutional values into various spheres of public relations, enables strengthening gender equality as an element of general principle of equality”

***Galyna Yurovska,
Judge of the
Constitutional Court of Ukraine***

In 2021, the following events were held at the Constitutional Court of Ukraine:

- a seminar “*Execution of the Decisions of the Constitutional Court of Ukraine: Monitoring and Control*“, organised on the occasion of the 25th anniversary of the foundation of the body of constitutional jurisdiction;
- the third session of the Research and Consultative Council of the Constitutional Court of Ukraine, which was attended by the members of the Research and Consultative Council, judges of the Constitutional Court of Ukraine and the Head of the Secretariat of the Constitutional Court of Ukraine;
- public lecture of the judge of the Constitutional Court of Ukraine Galyna Yurovska “*25 Years of the Constitutional Court of Ukraine – 25 Landmark Decisions of the Constitutional Court of Ukraine*“;



- expert discussion “*International and National Experience of the Functioning of the Amicus Curiae Institute*“. The event was attended by the Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty, judges of the Constitutional Court of Ukraine Viktor Horodovenko, Viktor Kychun, Viktor Kolisnyk, Vasyl Lemak, Oleh Pervomaiskyi, First Deputy Head of the Court’s Secretariat – Head of the Department of Organisational Work Larysa Biriuk, employees of the judges’ offices and the Court Secretariat, special advisors of the Constitutional Court of Ukraine Mirosław Granat, George Papuashvili and Alexandru Tănase, National Legal Adviser to the OSCE Project Co-ordinator in Ukraine Oleksandr Vodiannikov.



Expert Discussion “International and National Experience of the Functioning of the Amicus Curiae Institute” (26 November 2021)

• training “*The Problematic Issues of Constitutional Proceedings upon Constitutional Complaints*“. The event was organised by the Constitutional Court of Ukraine in co-operation with the OSCE Project Co-ordinator in Ukraine within the project “*Support to Ukraine’s Human Rights Protection by Enhancing Accessibility of Constitutional Justice*“. The main topics addressed during the discussion were practical

application of the institute of constitutional complaint as an instrument of human rights protection, analysis of the case-law of the bodies of constitutional jurisdiction of foreign states on specificities of admissibility of constitutional complaint and taking measures to ensure it;



Training “The Problematic Issues of Constitutional Proceedings upon Constitutional Complaints“ (17 December 2021)

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

In 2021 the judges of the Constitutional Court of Ukraine and the Secretariat employees were invited to participate in various scientific and practical events, including:

- a round table – presentation of a new Council of Europe project on “Support to the Judiciary of Ukraine in Ensuring Better Access to Justice“, attended by the judge of the Constitutional Court of Ukraine Viktor Horodovenko;
- IV International Conference „*Legal Foundations of Organisation and Implementation of Public Authority*“, dedicated to the memory of Doctor of Legal Sciences Professor, Academician and Founder of the National Academy of Legal Sciences of Ukraine, first Chairman of the Constitutional Court of Ukraine Leonid

Yuzkov. The Conference was attended by the former judges of the Constitutional Court of Ukraine Volodymyr Kampo and Mykhailo Kostytskyi as well as employees of the Court's Secretariat Natalia Kushakova-Kostytska, Vitalii Zaporozhets and Iryna Levandovska;

- National forum “*Constitutional Justice: Today’s Challenges and Ways to Resolve Them*“, attended by judges of the Constitutional Court of Ukraine Viktor Horodovenko and Vasyl Lemak;



*National forum “Constitutional Justice: Today’s Challenges and Ways to Resolve Them”
(17 June 2021)*

- International Conference “*Constitutional Democracy in Conditions of Threats to Territorial Integrity and National Security*“, dedicated to the 25th anniversary of the Constitution of Ukraine. The event was attended by the judges of the Constitutional Court of Ukraine Viktor Kolisnyk, Vasyl Lemak and Oleh Pervomaiskyi;



International Conference “Constitutional Democracy in Conditions of Threats to Territorial Integrity and National Security” (22 June 2021)

- Scientific and Practical Conference “*Interaction of Civil Society, Individual and State: the Vektor of Improvement*“, dedicated to the 25th anniversary of the Constitution of Ukraine, attended by the judge of the Constitutional Court of Ukraine Viktor Horodovenko;



Scientific and Practical Conference “Interaction of Civil Society, Individual and State: the Vektor of Improvement” (22 June 2021)

- X Jubilee Summer School “*Rule of Law and Constitutionalism. Constitutionalism in Times of Changes: Authority, Society and Democracy*“ which involved Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty, judges of the Constitutional Court of Ukraine Vasyl Lemak and Oleh Pervomaiskyi

and the Head of the Secretariat of the Constitutional Court of Ukraine Viktor Beschastnyi;



*X Jubilee Summer School “Rule of Law and Constitutionalism. Constitutionalism in Times of Changes: Authority, Society and Democracy“
(Kosiv, Ivano-Frankivsk oblast, 2–8 August 2021)*

- International Symposium of the Association of Asian Constitutional Courts and Equivalent Institutions *“The Age of the Internet: the Rule of law, Human Values and State Independence“* during which the judge of the Constitutional Court of Ukraine Halyna Yurovska delivered a report on *“Application of the European Court of Human Rights Case-Law by the Constitutional Court of Ukraine“*;

“In order to protect the constitutional human and citizen’s rights and freedoms the body of constitutional jurisdiction in Ukraine has been quite actively applying the international experience in matters of the greatest public interest and which are fundamental for further work towards the protection of human values“

*Galyna Yurovska,
Judge of the Constitutionl
Court of Ukraine*

THE INTERNET ERA: THE RULE OF LAW, THE VALUES OF PERSON, THE STATE INDEPENDENCE

“Quite often the international practice (including the positions of the ECtHR) was used by the Constitutional Court of Ukraine to substantiate the inadmissibility of restrictions on human rights and freedoms, as well as to establish the limits of the responsibility of the state towards individual in the implementation of domestic policy”

*Galyna Yurovska,
Judge of the Constitutionl
Court of Ukraine*

• IX Summer School “*Current Problems in Execution of Judgments: Constitutional Justice*” organised by the Center For Training and Human Resources Development of the Association of Asian Constitutional Courts and Equivalent Institutions based at the Constitutional Court of thy Republic of Turkey on 7–8 September 2021. The Court’s Secretariat employees participated online.

This year the contributions to the VIII Summer School organised by the Constitutional Court of the Republic of Turkey in September 2020 were published. The edition also contains reports delivered by the Court’s Secretariat employees https://www.anayasa.gov.tr/media/7259/8th_summer_school.pdf);

• V Kharkiv International Legal Forum organised by the Yaroslav Mudryi National Law University, with the support of the Project Co-ordunator in Ukraine. The Forum was attended by the judges of the Constitutional Court of Ukraine Viktor Horodovenko, Vasyl Lemak, Oleh Pervomayskyi and Head of the Secretariat Viktor Beschastnyi;



V Kharkiv International Legal Forum (Kharkiv, 20–24 September 2021)

- X annual judicial forum “*Independent Judiciary – the Basis of the State in the Conditions of Turbulence*“, which was attended by the judges of the Constitutional Court of Ukraine Viktor Horodovenko and Vasyl Lemak;



X annual judicial forum “Independent Judiciary – the Basis of the State in the Conditions of Turbulence” (30 September 2021)

- Meeting of the judges of the Constitutional Court of Ukraine Serhiy Holovaty, Viktor Kychun, Viktor Horodovenko, Vasyl Lemak, Oleh Pervomaiskyi with Professor of School of Law of University of Indiana, Executive Director of Centre for

Constitutional Democracy David Williams, one of the leading American constitutionalists, founder of the Centre for Constitutional Democracy;



Meeting of the judges of the Constitutional Court of Ukraine with Professor of School of Law of University of Indiana, Executive Director of Centre for Constitutional Democracy David Williams (5 October 2021)

- Meeting of the Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty with the State Language Protection Commissioner Taras Kremin;
- A round table – presentation of the CCJE Opinion on the evolution of judicial councils and their role in independent and impartial judicial systems, attended by the judge of the Constitutional Court of Ukraine Viktor Horodovenko;
- A round table “*The Protection of Human Rights in Ukraine: Current State and Prospects for Improvement*” dedicated to the 73rd anniversary of the Universal Declaration of Human Rights. The event was attended by the judge of the Constitutional Court of Ukraine Viktor Kychun, former judge of the Constitutional Court of Ukraine Mykhailo Kostytskyi and Head of the Secretariat of the Constitutional Court of Ukraine Viktor Beschstnyi;



• 5th International Medical and Legal Forum “*Legal Regulation of the Activity in the Sphere of Health Protection: Corruption Challenges in Times of Pandemic*“, which was attended by the judge of the Constitutional Court of Ukraine Viktor Horodovenko;



• Gender Forum „*Great Dialogue, the Idea of Constitutionalism and Women’s Rights*“, which was attended by the Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty and the judge of the Constitutional Court of Ukraine Galyna Yurovska.



*Gender Forum “Great Dialogue, the Idea of Constitutionalism and Women’s Rights”
(20 December 2021)*

3.3. 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-p/2019 of June 6, 2019, and No. 37-p/2019 of November 5, 2019.

The Council is composed of prominent domestic researchers, whose scientific interests cover various fields of law, statehood and philosophy. Among the members of the Council are: 11 full members of the National Academy of Legal Sciences of Ukraine, 8 corresponding members of the National Academy of Legal Sciences of Ukraine, 55 Doctors of Law, one Doctor of Economics, and 17 Associate Doctors of Legal Sciences.

Within the framework of cooperation between the Council and the Constitutional Court of Ukraine, in June 2021, its members participated in three regional and one international online conferences organised by the Constitutional Court of Ukraine jointly with the OSCE Project Co-ordinator in Ukraine.

Inclusion of the opinions, prepared by the Ukrainian leading legal thinkers during the study of case materials and formation of draft decisions of the Constitutional Court of Ukraine, is a significant contribution to the development of constitutional justice.

The ways of the most successful and effective cooperation are constantly being worked out, different opinions are being considered regarding the forms and formats of the work of the Council's members on issues that are subject of interests of the Constitutional Court of Ukraine and required to be scientifically examined.

As of today, the cooperation between the Council's members and the judges of the Constitutional Court of Ukraine is realised mainly in two forms. The judge addresses the member of the Council as the head of the institution and receives a collective opinion, or the judge may personally address a scholar who prepares a sole scientific and practical conclusion, where he/she sets out personal view and vision regarding question raised.

Yuri Barabash, the Council's Chairman, has repeatedly proposed organising an online discussion of the high-profile cases filed with the Court in an online format comprised of academicians united by one field of expertise, as well as the participation of the Council's members in the public parts of the plenary sessions of the Court in the form of an oral hearing, which will allow more opinions to be voiced simultaneously in the form of an open dialogue, and perhaps to come to the right conclusion.

In October 2021, the third session of the Council was held, during which the state and prospects for the development of interaction between the Council and the Constitutional Court of Ukraine were discussed. The materials of the participants' speeches were formed in a printed collection.

Also during this meeting, for a significant contribution to the formation of the constitutional judiciary in Ukraine, protection of human and citizen's rights and freedoms, strengthening of justice, for outstanding merits in the scientific field, high

professionalism, and on the occasion of the 25th anniversary of the founding of the Constitutional Court of Ukraine, three scholars from the Council and three scholars who are not members of the Council, but have prepared the largest number of scientific and practical conclusions for the Constitutional Court of Ukraine, were awarded with the badge of the Constitutional Court of Ukraine”.

A series of online events with the participation of members of the Council and judges of the Constitutional Court of Ukraine provided an opportunity for scholars to convey their opinion and increase the validity of the decisions of the Constitutional Court of Ukraine through an active discussion of debatable issues and problems with the national legal community.

The number of requests from judges-rapporteurs to Council members is constantly growing. In particular, in 2020, it amounted to 150 requests, and at the end of 2021 it reached 220. The number of responses is also actively increasing: in 2020, 100 responses were provided, and at the end of 2021 - 140. The Council members also involve other specialists in the preparation of conclusions, whose opinions contribute to a broader view of the essence of issues that are the interests of the Constitutional Court of Ukraine. Consequently, as of December 2021, the number of scholars from various fields of law, who repeatedly took an active part in the preparation of scientific and practical conclusions at the request of judge-rapporteurs and who are not members of the Council, amounted to more than 60 people. Among them, specifically, are: one academician of the National Academy of Legal Sciences of Ukraine, three corresponding members of the National Academy of Legal Sciences of Ukraine, professors, doctors of legal sciences. Also, this year, there have been some changes in the Council's composition, and now it includes 80 members.

A significant number of Council's members have been members of the Scientific and Advisory Board of the Supreme Court for a long time, and by the Decree of the Chairman of the Verkhovna Rada of Ukraine of December 30, 2021, the Scientific Advisory Council of the Chairman of the Verkhovna Rada of Ukraine, which included 22 scholars who are also members of the Council. That is, the best experts in the field of Ukrainian law as part of the advisory bodies of state power are involved at all stages of the formation, implementation and interpretation of Ukrainian legislation, namely, they implement a comprehensive approach to solving urgent issues in the fate of the country and society.

3.4. THE CONSTITUTIONAL COURT OF UKRAINE AND CIVIL SOCIETY

Effective communication between the Constitutional Court of Ukraine and civil society is a manifestation of the democratic development of the state. The work of the body of constitutional jurisdiction in Ukraine in the reporting period was based on the constitutional principles of its activities, i.e. publicity and openness.

Events and activities that took place in the Constitutional Court of Ukraine received wide coverage through the communication channels of the Constitutional Court of Ukraine: the Court's official website, Facebook, Twitter, Telegram, Youtube, national and regional media.



In 2021, the Constitutional Court of Ukraine continued to work on improving the methods of communication with the public and developing its communication ability.

Therefore, in the reporting year, a number of innovations were initiated and introduced, both concerning the improvement of access to information about the activities of the Court, and the development of image events.

During the year, the Constitutional Court of Ukraine prepared and published the following information booklets for citizens:



- *“Your constitutional complaint to the Court”*;
- *“The Constitutional Court of Ukraine in questions”*;
- *“25 landmark decisions of the Constitutional Court of Ukraine”*;
- *“25 years of the Constitutional Court of Ukraine”*.



Presentation video materials about the activities of the Court have also been created:

- a promo video about the Constitutional Court of Ukraine;
- a video about the adoption of the Constitution of Ukraine;
- a video about the activities of the Constitutional Court of Ukraine;
- a video about the key decisions of the Court.



With the aim to provide a greater access to information about the work of the Constitutional Court of Ukraine, citizens are given the opportunity to subscribe to the Court's website for automatic distribution of information materials. For the effectiveness of interaction with target audiences and the speed of dissemination of information about the activities of the Court in 2021, another communication channel was created – the Telegram channel of the Constitutional Court of Ukraine.

To mark the 25th anniversary of the founding of the Constitutional Court of Ukraine, the museum exposition of the Court was conceptually updated, in particular, the placement of existing exhibits and a new heading were optimized.

Also, in 2021, a modern virtual 3D tour of the Court building with sound accompaniment was created at the Constitutional Court of Ukraine.



Due to these improvements, everyone can see in real time the session rooms of the Grand Chamber and the senates of the Court, where acts crucial for the country are adopted, see the press center, the library, and learn more about the work of the Court.



3.5. INTERNATIONAL COOPERATION

During 2021, quarantine was continued and restrictive anti-epidemic measures were maintained to prevent the spread of acute respiratory disease COVID-19, caused by the SARS-CoV-2 coronavirus. As a result, the tendency to hold international events online or postpone their dates has continued. At the same time, new IT solutions are increasingly being used to maintain a proper dialogue with the foreign partners.

One of the key partners of the Constitutional Court of Ukraine in the reporting year was the OSCE Project Co-ordinator in Ukraine. In 2021, two joint projects were implemented:

- “Support to the Reform of Constitutional Justice”;
- “Support to the Protection of Human Rights by Improving Access to Constitutional Justice”.

Within the framework of these projects, time-tested developments were combined and new forms of cooperation were introduced.

In particular, a new online resource “The Library of Constitutional Law” (<http://ccu.gov.ua/library>) was launched on the official website of the Constitutional Court of Ukraine. An electronic information resource was created to familiarise the targeted audience with scientific and analytical materials and judicial practice related to the activities of the Constitutional Court of Ukraine and bodies of constitutional jurisdiction of foreign countries, as well as for their practical use.

The Library of Constitutional Law contains decisions of international judicial institutions, foreign bodies of constitutional control and judiciary, as well as scientific publications on constitutional and legal topics written by leading domestic and foreign experts, and other useful information. Judgments of international courts are presented in Ukrainian, translated with the assistance of the OSCE Project Co-ordinator in Ukraine.

A nationwide educational project has been launched, the intellectual television competition “New Generation”. The project is supported by the leading Ukrainian media (in particular, the ESPRESSO TV channel), international partners (USAID, OSCE Project Co-ordinator in Ukraine, Pact), national expert and educational organisations (the Center



for Political and Legal Reforms, the Minor Academy of Sciences of Ukraine, etc.). The first special season of the New Generation TV contest, dedicated to the 25th anniversary of the Constitution of Ukraine, was held.

This year, within the scope of project activities, two *amicus curiae* brief were provided by the special advisers of the Court:

- in the case upon the constitutional petition of 45 People’s Deputies of Ukraine regarding the constitutionality of Articles 133–191, subparagraph 2 of paragraph 2 of Section XXXXII “Final and Transitional Provisions” of the Election Code of Ukraine;
- in the case upon constitutional complaints of Hevork Barsehian and Nataliia Linenko regarding the conformity of the provisions of Article 485 of the Customs Code of Ukraine with the Constitution of Ukraine (individualisation of legal liability during the application of the provisions of Article 485 of the Customs Code of Ukraine).

The cooperation with the Council of Europe continued.

During its 129th plenary session, the European Commission for Democracy through Law (Venice Commission) upheld the decision of the Constitutional Court of Ukraine regarding the oath of two newly appointed judges of the Court. This is stated in the Synopsis (Short Report) on the results of the Commission meeting held on December 10-11 of this year (CDL-PL-PV(2021)0004syn).

In December 2021, the Constitutional Court of Ukraine requested the Venice Commission to provide an *amicus curiae* brief in the case upon the constitutional petition of 50 People’s Deputies of Ukraine on the constitutionality of the Law of Ukraine “On Amendments to Article 80 of the Constitution of Ukraine” (regarding the immunity of People’s Deputies) of September 3, 2019 No. 27–IX. The *amicus curie* brief is expected to be delivered in the spring of next year.

This year, Deputy Chairman of the Constitutional Court of Ukraine, member of the Venice Commission Serhiy Holovaty took part in the meetings of the President of Ukraine Volodymyr Zelensky and the Chairman of the Verkhovna Rada Dmytro Razumkov with the President of the Venice Commission Gianni Buquicchio (June 7).



Meeting of the President of Ukraine Volodymyr Zelensky with the President of the Commission Gianni Buquicchio with the participation of the Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty (7 June 2021)

On December 10, 2021, at the 129th plenary session of the Venice Commission, Deputy Chairman of the Constitutional Court of Ukraine Serhiy Holovaty was elected a member of the Bureau of the Commission, which is its main governing body.



Meeting of judges of the Constitutional Court of Ukraine with the delegation of the Council of Europe (18 November 2021)

The cooperation between the Constitutional Court of Ukraine and the Department for the Execution of Judgments of the European Court of Human Rights is gradually deepening. The implementation of the activities discussed during the meeting of the judges of the Constitutional Court of Ukraine with the delegation of the Council of Europe headed by the Director General of the Directorate General Human Rights and Rule of Law Christos Giakoumopoulos during his official visit to Ukraine in November this year, is scheduled for 2022.

Particular attention was paid to improving the qualifications of the employees of the Secretariat of the Constitutional Court of Ukraine, including through familiarisation with the best foreign practices.

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, 2021, the overall staff number of the Constitutional Court of Ukraine was 397, including 18 judges, 54 employees of patronage offices, 214 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, 2021 was 371, including 16 judges, 47 employees of patronage offices, 200 civil servants, 11 employees of support services, 97 employees of Court's motor depot.

Out of the general number of the Court's Secretariat:

21 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,

41 civil servants and 7 employee of patronage offices have state awards and honorary titles,

3 civil servants have basic higher education,

206 civil servants and 47 employee of patronage offices have higher education (including 93 and 29 master's degree respectively),

122 civil servants and 46 employee of patronage offices have higher legal education,

33 civil servants and 4 employee of patronage offices graduated from National Academy of Public Administration under the President of Ukraine,

38 civil servants are under 35,

147 civil servants are between 36 and 60,

12 civil servants are over 60.

THE WORK OF THE SECRETARIAT OF THE CONSTITUTIONAL COURT OF UKRAINE IN 2021

During 2021, the Secretariat of the Constitutional Court of Ukraine performed the tasks defined by Article 44 of the Law of Ukraine "On the Constitutional Court of Ukraine" and the Rules of Procedure of the Constitutional Court of Ukraine, in particular, considerable attention was paid to the field of information support, modern and understandable communication with citizens, public and expert communities.

Positive results were achieved in this area during 2021, namely:

– the interaction of the Court with media representatives has been improved in order to effectively ensure publicity and openness in the Court's activity;

– the Procedure for ensuring the functioning of the official website of the Constitutional Court of Ukraine was approved;

– constant updating of information about the Court's activities on the website, in particular, the official promulgation of the Court's acts and the placement of

information materials on cooperation with representatives of foreign constitutional justice bodies, international organisations (meetings, visits, etc.) (more than 450 information messages about the judicial and extrajudicial) activities of the Court);

- coverage of the activities of the boards of judges of the Court and provision of information on the results of the consideration of cases was introduced;

- monthly coverage of the results of the work of the Court was introduced;

- broadcasting of public sessions of the Constitutional Court of Ukraine was introduced on the Court’s Youtube channel;

- the operation of the Court’s official website has been improved, in particular, some technical and interface components have been modernised;

- the production of information booklets and new presentation materials is ensured;

- the possibility of subscribing on the Court’s website for automatic distribution of informational materials was provided;

- the Telegram channel of the Constitutional Court of Ukraine was created;

- a new online information resource “Library of Constitutional Law” was introduced;

- the exhibition exposition of the Constitutional Court of Ukraine was organised, in particular, the existing fund was structured in the relevant sections;

- a design was developed and a general description of the necessary materials for the production of the brand book of the Constitutional Court of Ukraine was prepared;

- the Communication Strategy of the Constitutional Court of Ukraine for 2022–2025 was prepared and approved.

PRELIMINARY REVIEW OF CONSTITUTIONAL COMPLAINTS

The constitutional complaint, as a domestic legal remedy, is aimed at the effective protection of human rights that have been violated as a result of the application of those provisions of the law of Ukraine that are contrary to the fundamental constitutional principles and tenets. At the same time, the legislator, providing individuals and legal entities with the opportunity to access constitutional justice, defined the procedure for applying to the Constitutional Court of Ukraine, the mechanism for carrying out constitutional proceedings, as well as the powers of the bodies of the Court and its Secretariat.

Particularly, in accordance with the provisions of Article 44 of the Law of Ukraine “On the Constitutional Court of Ukraine” (hereinafter referred to as the Law), the Secretariat of the Constitutional Court of Ukraine provides organisational, analytical, legal, informational and logistical support for the activities of the Court, specifically, it *performs registration and preliminary review of all forms submissions that are lodged with the Court* (Article 44.2.6).

Article 57.3 of the Law determines that in case a constitutional complaint does not meet the requirements of this Law in form, the Head of the Secretariat shall return it to the subject of the right to constitutional complaint.

Preliminary review of applications lodged with the Court is carried out in accordance with the requirements of paragraph 39 of the Court’s Rules of Procedure.

In particular, constitutional complaints in form and content shall comply with the requirements established by Articles 55, 56, and 74.1 of the Law, and are considered admissible under the conditions predetermined by Article 77 of the Law (paragraph 4). The Secretariat of the Court review constitutional complaints for compliance with the requirements of the Law in form within one working day from the date of its registration (paragraph 8).

In accordance with the provisions of paragraph 40 of the Rules of Procedure, the Head of the Secretariat of the Court shall return a constitutional complaint to the subject of the right to constitutional complaint, if:

1) the form of the constitutional complaint does not meet the requirements of the Law;

2) the constitutional complaint concerns a case in which the final court decision entered into force before September 30, 2016.

Constitutional complaints that do not meet the formal requirements of the Law shall be returned to the subjects of the right to constitutional complaint by the Head of the Secretariat of the Court, and are not distributed among the judges of the Court (paragraph 41.2.2 of the Rules of Procedure).

Such a mechanism for the legislative settlement of the issues raised, and the existing approaches to preliminary review of constitutional complaints not only help to avoid overloading the Court with complaints that do not meet the formal requirements of the Law, but also provide an opportunity for the subjects of the right to constitutional complaint to eliminate the formal shortcomings of the complaint and bring it into line with the requirements of the Law, which is a necessary condition for further consideration of the constitutional complaint.

Statistics on received and processed constitutional complaints during 2021 (as of December 31, 2021)

From **January 1 to December 31, 2021**, the Court received **484** constitutional complaints, in respect of which the Secretariat of the Court carried out a preliminary review for compliance with the formal requirements of the Law.

Among **484** constitutional complaints filed with the Court during the reporting period, **239** constitutional complaints (**49%**) complied with the formal 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, **245** constitutional complaints (**51%**) 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 formal requirements of the Law.

For comparison:

– 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, **249** constitutional complaints (44%) complied with the requirements of the Law and **312** constitutional complaints (56%) were returned to the subjects of the right to constitutional complaint.

In addition, in 2021, 88 constitutional complaints were re-submitted by the subjects of the right to constitutional complaint to the Court (the re-submitting of constitutional complaints is determined from the moment the institution of a constitutional complaint was established). 59 of these complaints met the formal requirements of the Law and were distributed among the judges of the Court; with regard to 2³ constitutional complaints, constitutional proceedings were initiated.

In 2021, 7 decisions were adopted in cases upon constitutional complaints, 3⁴ of which were based on 7 constitutional complaints, and 4 were re-submitted to the Court in 2018–2019: Olena Odintsova (entry No. 18/5915 of September 23, 2019), Anatolii Kremenchutskyi (entry No. 18/1186 of March 7, 2018), Vladyslav Pavlyk (entry No. 18/77 of January 4, 2019), Dmytro Krupko (entry No. 18/4800 of September 18, 2018).

Consequently, out of **245** complaints that were returned to complainants due to non-compliance with the formal requirements of the Law:

➤ in **129** constitutional complaints the requirements set out in Article 55.1 of the Law were not met (issues that could not be the subject of a constitutional complaint were raised, in particular: appealing court decisions in the judicial system of Ukraine and disagreeing with them, complaints against the actions of state bodies and their officials, constitutionality of by-laws, provisions of legislative acts that were not applied in the final court decision in the complainant's case, etc. with the provisions of the Basic Law of Ukraine);

➤ in **14** constitutional complaints, the requirements set out in Article 55.2.1 of the Law were not met (the last name, first name, patronymic of the person and/or addresses of the registered place of residence of the person are not indicated; in the case of legal entities applying to the Court - their full name and/or location of such a legal entity);

➤ in **7** constitutional complaints, the requirements set out in Article 55.2.2 of the Law were not met (indicating in the constitutional complaint the information about the need for the participation of an authorised person in his/her case, the subject of the right to a constitutional complaint did not provide information about such a person);

³ Ruling of the Second Senate of the Constitutional Court of Ukraine No. 23-u(II)/2021 of September 29, 2021, on the initiation of constitutional proceedings in the case upon constitutional complaint of the citizen of Ukraine I.I. Hubko (entry No. 18/179 of May 11, 2021) regarding the constitutionality of a separate provision of Article 361.5.1 of the Administrative Procedure Code of Ukraine; Ruling of the First Board of Judges of the First Senate of the Court No. 175-1(I)/2021 of December 7, 2021 on the initiation of constitutional proceedings in the case upon constitutional complaint of I.S. Melnychuk (entry No. 18/427 of November 17, 2021) regarding the constitutionality of the first sentence of Article 86.15.6 of the Law of Ukraine "On the Prosecutor's Office" of October 14, 2014 No. 1697-VII.

⁴ Decision of the Constitutional Court of Ukraine (Second Senate) No. 3-r(II)/2021 of July 21, 2021 in the case upon the constitutional complaint of Olena Odintsova (entry No. 18/5915 of September 23, 2019) regarding the constitutionality of certain provisions of Article 471.2 of the Customs Code of Ukraine; Decision of the Constitutional Court of Ukraine (Second Senate) No. 5-r(II)/2021 of July 21, 2021 in the case upon constitutional complaints of Anatolii Kremenchutskyi (entry No. 18/1186 of March 7, 2018) and Vladyslav Pavlyk (entry No. 18/77 of January 4, 2019) regarding the constitutionality of the provision of Article 294.10 of the Code of Ukraine on Administrative Offenses; Decision of the Constitutional Court of Ukraine (Second Senate) No. 6-r(II)/2021 of September 16, 2021, in the case upon constitutional complaints of Dmytro Krupko (entry No. 18/4800 of September 18, 2018) regarding the constitutionality of Article 81.1, Article 82.1 of the Criminal Code of Ukraine, Volodymyr Kostina (entry No. 18/1328 of February 26, 2019), Oleksandr Melnychenko (entry No. 18/3621 of June 3, 2019) regarding the constitutionality of Article 82.1 of the Criminal Code of Ukraine, and upon the constitutional complaint of Viktor Hohin (entry No. 18/6 of January 8, 2020) regarding the constitutionality of Article 81.1 of the Criminal Code of Ukraine (the case of reviewing the sentence of a person, sentenced to life imprisonment).

➤ in **145** constitutional complaints, the requirements set out in Article 55.2.3 of the Law were not met (there is no summary of the final court decision in which the relevant provisions of the law of Ukraine were applied, including in cases where the applicants raised issues that cannot be the subject of a constitutional complaint);

➤ in **102** constitutional complaints the requirements set out in Article 55.2.4 of the Law were not met (there is report of proceedings of the relevant case in courts);

➤ in **184** constitutional complaints the requirements set out in Article 55.2.5 of the Law were not met (the subject of the constitutional review is not defined, i.e. there is no specification of provisions of the law of Ukraine to be reviewed for conformity to the Constitution of Ukraine, and there is indication on what particular provisions of the Constitution of Ukraine against which such law of Ukraine is to be reviewed for conformity, particularly, in cases where the complainant raised issues that cannot be the subject of a constitutional complaint);

➤ in **151** constitutional complaints the requirements set out in Article 55.2.6 of the Law were not met (there is no substantiation of alleged unconstitutionality of a law of Ukraine (specific provisions thereof), specifying those human rights safeguarded by the Constitution of Ukraine, which in the opinion of the subject of the right to constitutional complaint, have been violated by the application of such law, particularly, in cases where the complainant raised issues that cannot be the subject matter of a constitutional complaint);

➤ in **113** constitutional complaints the requirements set out in Articles 55.2.7 and 55.2.8 of the Law were not met (there is no information regarding documents and materials referred to by the subject of the right to constitutional complaint, with copies of such documents and materials attached; there is no list of the attached materials and documents);

➤ in **100** constitutional complaints the requirements set out in paragraph ten of Article 55.2 of the Law were not met (a copy of the final court decision in the case of a subject of the right to constitutional complaint is not duly certified by the adjudicating court);

➤ in **7** constitutional complaints, the requirements set out in Article 56.2 of the Law were not met (constitutional complaint is not signed by an individual in person or signed by an authorised person);

➤ in **7** constitutional complaints the requirements set out in Article 56.3 of the Law were not met (constitutional complaints filed by a legal person are not attached with constituent documents and/or acts on the appointment (election) to the position of authorised persons who signed the relevant constitutional complaint);

➤ in **3** constitutional complaints the requirements set out in Article 74.1 of the Law were not met (constitutional complaints filed in a non-state language);

➤ **4** constitutional complaints were filed in cases where the final court decision entered into force before September 30, 2016.

From the content of 484 constitutional complaints lodged with the Court during 2021, it can be seen that the following issues were raised:

– **338** constitutional complaints were filed regarding the compliance of the legislative acts of Ukraine applied in the final court decisions in the complainants' case with the Constitution of Ukraine (constitutionality);

– **18** constitutional complaints were filed regarding the compliance of legislative acts of Ukraine that were not applied in the final court decisions with the Constitution of Ukraine (constitutionality);

– **39** constitutional complaints were filed regarding the appeal of court decisions in the case (review for compliance with the Constitution of Ukraine and the laws of Ukraine, the correctness of the application of the provisions of legislative acts of Ukraine by the courts);

– **17** constitutional complaints were filed regarding the appeal of by-laws adopted by state authorities (acts of the Cabinet of Ministers of Ukraine, decrees of the President of Ukraine, etc.);

– **88** constitutional complaints were filed regarding appeals against the actions of state authorities and other issues that do not belong to the powers of the Court.

Analysis of constitutional complaints on issues raised by complainants

From the analysis of the processed constitutional complaints by the Division of Preliminary Examination of Constitutional Complaints of the Secretariat of the Court, it is seen that the following legislative acts were most often challenged by the subjects of the right to a constitutional complaint:

– Code of Civil Procedure of Ukraine – **45** constitutional complaints;
– Code of Administrative Procedure of Ukraine – **44** constitutional complaints;
– Code of Criminal Procedure of Ukraine – **44** constitutional complaints;
– Code of Ukraine on Administrative Offenses – **18** constitutional complaints;
– Civil Code of Ukraine – **14** constitutional complaints;
– Code of Commercial Procedural of Ukraine – **10** constitutional complaints;
– Labour Code of Ukraine – **7** constitutional complaints;
– Housing Code of Ukrainian SSR – **6** constitutional complaints;
– Criminal Code of Ukraine – **6** constitutional complaints;
– Customs Code of Ukraine – **5** constitutional complaints;
– Tax Code of Ukraine – **5** constitutional complaints;
– Land Code of Ukraine – **4** constitutional complaints;
– Marriage and Family Code of Ukraine – **4** constitutional complaints;
– Family Code of Ukraine – **4** constitutional complaints;
– Code of Ukraine on Bankruptcy Procedures – **3** constitutional complaints;
– Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Catastrophe” of February 28, 1991, No. 796-XII – **21** constitutional complaints;

– Law of Ukraine “On Pension Provision for Persons Discharged from Military Service, and Some Other Persons” of April 9, 1992, No. 2262-XII – **18** constitutional complaints;

– Law of Ukraine “On the Prosecutor’s Office” of October 14, 2014, No. 1697-VII – **16** constitutional complaints;

– Law of Ukraine “On Measures for Legislative Support of Reforming the Pension System” of July 8, 2011, No. 3668-VI – **12** constitutional complaints;

– Law of Ukraine “On Amendments to the Code of Commercial Procedure of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Administrative

- Procedure of Ukraine and Other Legislative Acts” of October 3, 2017, No. 2147-VIII – **12** constitutional complaints;
- Law of Ukraine “On the Judiciary and the Status of Judges” of June 2, 2016, No. 1402-VIII – **10** constitutional complaints;
 - Law of Ukraine “On Enforcement Proceedings” of June 2, 2016, No. 1404-VIII – **8** constitutional complaints;
 - Law of Ukraine “On Mortgage” of June 5, 2003, No. 898-IV – **8** constitutional complaints;
 - Law of Ukraine “On Court Fee” of July 8, 2011, No. 3674-VI – **8** constitutional complaints;
 - Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures for the Reform of the Prosecution Bodies” of September 19, 2019, No. 113-IX – **6** constitutional complaints;
 - Law of Ukraine “On Public Service” of December 10, 2015, No. 889-VIII – **6** constitutional complaints;
 - Law of Ukraine “On Compulsory State Pension Insurance” of July 9, 2003, No. 1058-IV – **6** constitutional complaints;
 - Law of Ukraine “On Social and Legal Protection of Servicemen and Members of Their Families” of December 20, 1991, No. 2011-XII – **6** constitutional complaints;
 - Law of Ukraine “On the High Council of Justice” of December 21, 2016, No. 1798-VIII – **5** constitutional complaints;
 - Law of Ukraine “On Amendments to the Code of Commercial Procedural of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Administrative Procedure of Ukraine on Improving the Procedure for Considering Court Cases” of January 15, 2020, No. 460-IX – **5** constitutional complaints;
 - Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection” of October 22, 1993, No. 3551-XII – **5** constitutional complaints;
 - Law of Ukraine “On the National Police” of July 2, 2015, No. 580-VIII – **4** constitutional complaints.

The complainants most often raised the issue of review for constitutionality of the laws of Ukraine (their separate provisions) in the following areas:

- the right to social security (accrual, recalculation of pensions/social benefits) – **72** constitutional complaints;
- criminal procedural law – **52** constitutional complaints;
- administrative proceedings – **52** constitutional complaints;
- civil procedural law – **44** constitutional complaints;
- administrative law – **22** constitutional complaints;
- civil law – **20** constitutional complaints;
- commercial procedural law – **13** constitutional complaints;
- financial law (the state budget of Ukraine, taxes, duties, court fees, etc.) – **11** constitutional complaints;
- labour law – **9** constitutional complaints;
- family law – **8** constitutional complaints;
- criminal law – **7** constitutional complaints;
- land law – **6** constitutional complaints;

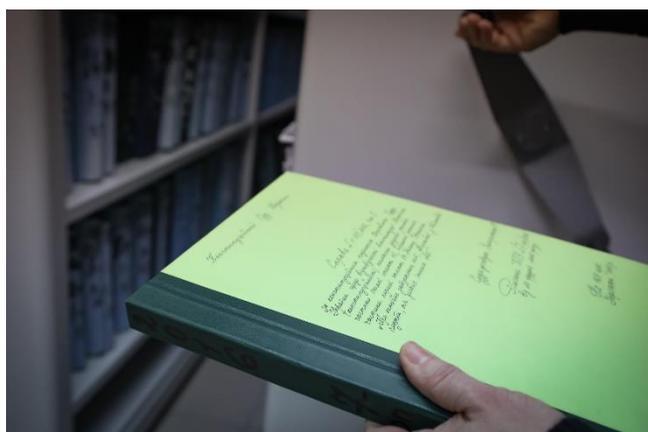
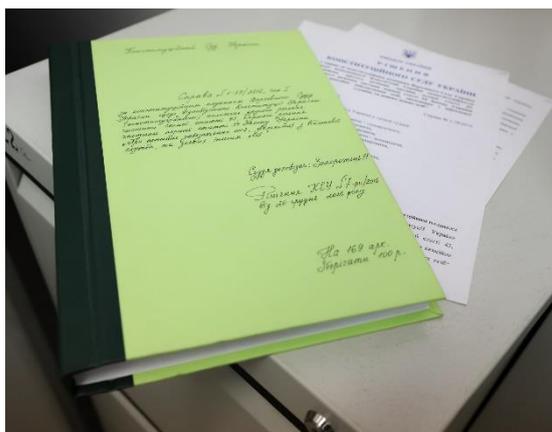
– commercial law – **3** constitutional complaints.

In 192 constitutional complaints, the complainants raised the issue regarding the constitutionality of the provisions of legislative acts that do not belong to the indicated branches of law, and on other issues (appeal of court decisions in the case, appeal against by-laws of state authorities, appeal against actions of state authorities, etc.).

Consequently, among the most frequently raised issues in constitutional complaints were:

- social security of persons affected by the Chernobyl catastrophe, military personnel, civil servants, employees of law enforcement agencies and prosecutors;
- the right to appeal court decisions in the appellate and cassation procedure (the absence of the possibility of such an appeal), exemption from paying the court fee when considering a case in all judicial instances, the right to appeal the decisions of the investigating judge during of pre-trial investigation of criminal cases.

4.2. THE ARCHIVE OF THE CONSTITUTIONAL COURT OF UKRAINE



In 2021 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.

The Archive of the Constitutional Court of Ukraine ensures the issuance and use of archival documents (cases), the provision of archival certificates and extracts from archival documents on orders from employees of the Secretariat of the Court.

During 2021, 606 originals of acts of the Constitutional Court of Ukraine were accepted into the Archive of the Constitutional Court of Ukraine and a fund for their use was created in the amount of 1838 copies.

The materials of 180 court cases were compiled, in which the Court adopted a decision or issued a ruling.

An electronic archive of court cases for 2021 was created by filling the automated subsystem “CCU Archive” with electronic documents for internal use.

The materials of 10 court cases, on which the Constitutional Court of Ukraine adopted a decision, are posted on the official website of the Court.

The presence of an electronic archive of court cases contributes to the efficiency of searching for the necessary documents included in the materials, and allows to simultaneously view them by any number of users. At the same time, the electronic archive ensures the safety of court case materials on paper, for which, in accordance with the Law of Ukraine “On the Constitutional Court of Ukraine”, a storage period of 100 years is determined.

Protocols of sessions, plenary sessions of the Court, including in-camera parts of the plenary sessions of the Court and the senates of the Court, boards of judges and standing committees of the Court in (23 volumes of cases) were systematised and formed.

Files of permanent and long-term (more than 10 years) storage were received from structural subdivisions of the Court Secretariat and processed in the amount of 28 volumes for archival storage.

Arrangement of archival files and other documents of the Constitutional Court of Ukraine was completed by binding them in hardback cover for their proper storage (153 copies).

One meeting of the expert commission at the Constitutional Court of Ukraine was organised and documented by protocol.

The descriptions of cases of permanent and long-term (more than 10 years) storage and of personnel matters for 2015–2018 have been approved with the central State Archives of Supreme Bodies of Power and Government of Ukraine.

To ensure access to public information, the Archives of the Court prepared 93 documents at the request of individuals and legal entities and provided the requested materials.

As of 2021, the archival fund of the Constitutional Court includes 17,300 items for storage.

4.3. THE LIBRARY OF THE CONSTITUTIONAL COURT OF UKRAINE

The Library of the Constitutional Court of Ukraine is a special library established in accordance with the Law of Ukraine “On the Constitutional Court of Ukraine” to provide the Court with scientific and other professional literature, it operates as an independent structural unit of the Secretariat of the Court.



The Library of the Constitutional Court of Ukraine presents the legal literature, encyclopedias, directories, dictionaries of a scientific, popular science and applied nature, collections of decisions of foreign constitutional courts that may be necessary for users.

Caring about the information culture of users, the library staff made every effort to form and maintain a reference and bibliographic apparatus in traditional and automated modes. The work on reference and information

services for library users is aimed at ensuring free access to information, expanding the information service. The search engine of the Library of the Constitutional Court of Ukraine includes a system of library catalogs: alphabetical, systematic catalogs and the IRBIS electronic library catalog, which at the end of 2021 contains 239,341 thousand bibliographic records.

To meet the information needs of readers during 2021, more than 3,000 documents were issued for use, according to user requests, 8 bibliographic references were provided (thematic search and selection of necessary documents): constitutional complaint, access to justice, criminal liability, land legal relationship, doctrine, proof, approaches, constitutional proceedings, etc.

In 2021, solemn celebrations of memorable dates and anniversaries and/or memorial events took place in Ukraine at the state level. In this regard, during 2021, the Library of the Constitutional Court of Ukraine organised and held 9 thematic exhibitions, in particular, to the 25th anniversary of the Constitution of Ukraine “25th anniversary of the Constitution of Ukraine – a look into the future”, the 30th anniversary of Independence of Ukraine “Independent Ukraine – a portrait of the new time”, the 25th anniversary of the Constitutional Court of Ukraine “Development of constitutional justice and constitutional law in Ukraine”, as well as thematic exhibitions dedicated to the Day of Unity and Freedom of Ukraine; to the Day of Remembrance and Reconciliation; informational and educational thematic book exhibition dedicated to the Day of Remembrance of those who died for the freedom of Ukraine (Ilovaisk tragedy); informational and educational thematic book exhibition in connection with the anniversary of the Babyn Yar tragedy of 1941-1943; thematic book exhibition dedicated to the Day of Remembrance of the Victims of the Holodomors of 1932-1933; to the Day of Dignity and Freedom “Ukraine – the country of the unconquered”.

Within the framework of cooperation with the leading libraries of Ukraine, the Library of the Court donated 89 copies of non-core documents to the National Library named after V.I. Vernadsky, National Scientific Medical Library of Ukraine, G. S. Kostiuk Institute of Psychology of the National Academy of Pedagogical Sciences of Ukraine and the National Academy of Pedagogical Sciences of Ukraine.

Every year, the fund of the Library of the Constitutional Court of Ukraine is replenished with the latest legal literature, primarily on constitutional jurisdiction and

other branches of law. The sources of funding for replenishing the library stock were budgetary funds and receipts of publications from free sources in accordance with the Law of Ukraine “On Mandatory Copies of Documents” (504 documents were received).

For the formation of the library fund in 2021, 20 110, 00 hryvnias was allocated from the general fund of the budget for the purchase of literature, and 150 000,00 hryvnias for the subscription of periodicals. In 2021, the fund of the Library of the Constitutional Court of Ukraine was replenished by 535 units, and as of January 1, 2022, there are more than 19,000 copies.

4.4. THE OFFICIAL PUBLICATION OF THE CONSTITUTIONAL COURT OF UKRAINE

During 2021, six volumes of the Bulletin of the Constitutional Court of Ukraine were published, which contained 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”.



The permanent section “Theory and Practice of Constitutional Jurisdiction” covered topical issues of constitutional justice and constitutional law of Ukraine and other states. During the year, the journal published reviews of conferences organised by the Constitutional Court of Ukraine, abstract reviews of sources on constitutional and legal topics, reporting information, etc.

The Volume 5 of the Bulletin of the Constitutional Court of Ukraine was dedicated to the 25th anniversary of the Constitutional Court of Ukraine. The journal presented in-depth scientific research on contemporary issues of constitutional law, in particular constitutional control, the institute of constitutional complaint and the effectiveness of its functioning, improving the legal regulation of the activities of the Constitutional Court of Ukraine, strengthening its independence and other problems of modern constitutionalism. The section “A separate opinion: a tool for the development of law” has united some of the numerous separate opinions of the judges of the Constitutional Court of Ukraine, which set out doctrinal positions that still remain relevant and important for the further case law formation.

In addition, in 2021, another collection of acts of the Constitutional Court of Ukraine was published, i.e. Book 18 “The Constitutional Court of Ukraine. Decisions. Opinions. 2020”, which contains 21 acts of the Constitutional Court of Ukraine, including 10 decisions in the cases upon constitutional petitions of People's Deputies of Ukraine, constitutional petition of the Supreme Court on the constitutionality of the provisions of the laws of Ukraine, the Decree of the President of Ukraine and 11 decisions in the cases upon constitutional complaints regarding the constitutionality of provisions of laws of Ukraine.

On the occasion of the 25th anniversary of the foundation of the Constitutional Court of Ukraine, an Alphabetised index of the decisions and conclusions of the Constitutional Court of Ukraine (1997–2020) was also issued to assist in finding the necessary decision or opinion of the Constitutional Court of Ukraine, as well as its legal positions contributing to the study of the practice of the Constitutional Court of Ukraine, the study of its doctrinal approaches to understanding and solving legal issues. The publication will be useful in law-making and law-enforcement activities, and will also serve as a basis for further scientific research aimed at establishing and developing constitutional principles and values, increasing the level of protection of human and citizen rights and freedoms.

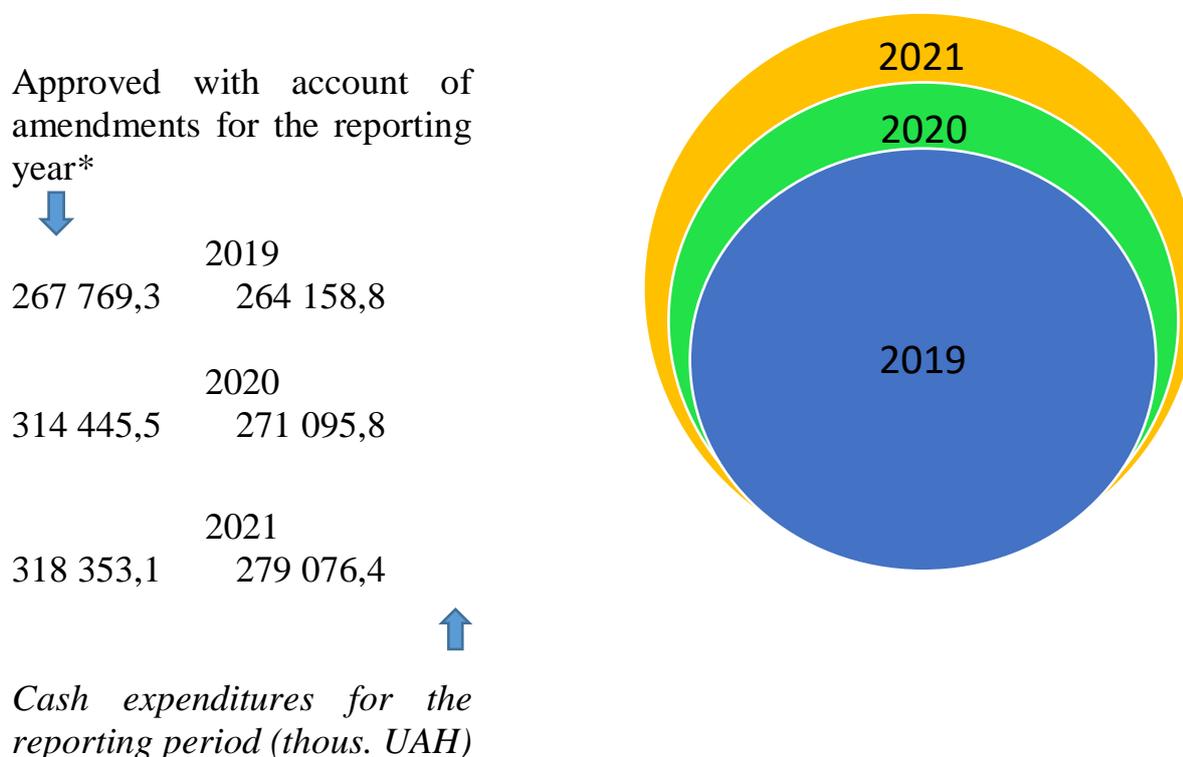
4.5. FINANCIAL SUPPORT FOR THE ACTIVITIES OF THE CONSTITUTIONAL COURT OF UKRAINE

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 148¹ of the Constitution of Ukraine).

However, the situation with the financial support for the activities of the Constitutional Court of Ukraine is becoming more complicated every year, which causes serious concern. During the formation of the State Budget of Ukraine for 2021, the Court’s need for expenditures was not met by 69,941.2 thous. UAH.

According to the Law of Ukraine “On the State Budget of Ukraine for 2021” budget assignments for the general fund of the state budget in the amount 313,463.1 thous. UAH was allocated to the Constitutional Court of Ukraine (under the program classification code of expenditures and lending 0801010 “Ensuring constitutional jurisdiction in Ukraine”), including consumption expenses in the amount of 313,463.1 thous. UAH and development expenses UAH 4,890.0 thous. UAH respectively.

Receipt and Use of Funds from the State Budget of Ukraine by the Constitutional Court of Ukraine

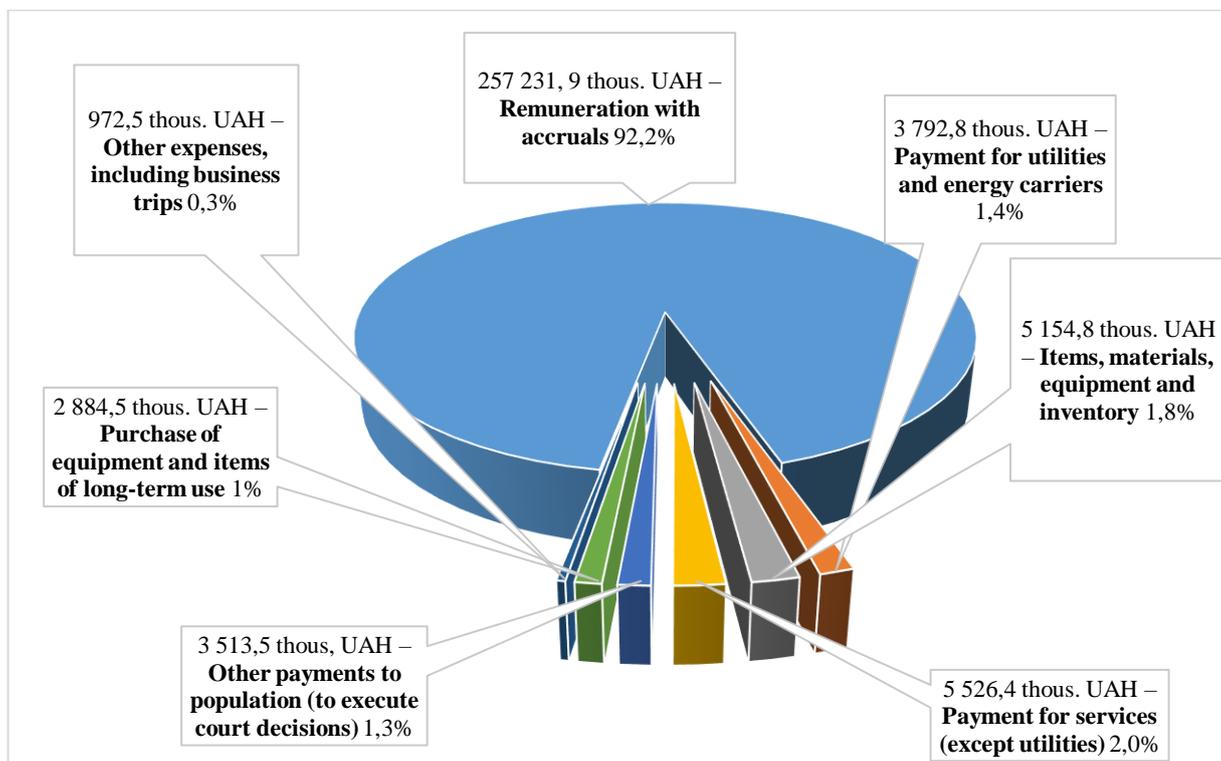


It should be noted that in connection with limited financial resources for ensuring the activities of the Constitutional Court of Ukraine, as well as other factors, namely, the continuation on the territory of Ukraine of the quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, the priority needs of the Constitutional Court of Ukraine were financed. The above made it necessary to change the annual schedule of the budget to redistribute expenditures between the codes of the economic classification of expenditures. According to the results of the redistributions, carried out in accordance with the certificates of the Ministry of Finance of Ukraine, expenditures under the budget program of the Constitutional Court of Ukraine amounted to 314,513.7 thous. UAH, and development expenses 3,839.4 thous. UAH respectively (plan with changes).

Cash expenditures from the general fund of the state budget under the budget program of the Constitutional Court of Ukraine for 2021 amount to 279,076.4 thous. UAH, or 87.7% of the annual plan.

Information on the implementation of the budget by the Constitutional Court of Ukraine for 2021 is detailed in the diagram.

Expenditure structure in 2021



Remuneration with accruals was among the most cash expenditures (257,231.9 thous. UAH, or 92.2%).

Expenditures for the purchase of items, materials, equipment and inventory in the amount of 5,154.8 thous. UAH (or 1.8%) were directed to the purchase of household equipment and inventory, components and consumables for computer equipment, stationery and household goods, etc. For proper maintenance of the institution, expenditures were also made for payment of utility services and energy carriers in the amount of 3,792.8 thous. UAH (or 1.4%), payment for other services – 5,526.4 thous. UAH (or 2.0%), payments to execute court judgments in the amount of 3,513.5 thous. UAH (or 1.3%) and other expenses, including business trips – 972.5 thous. UAH were also carried out (or 0.3%).

In 2021, in particular, contributions to international organisations, of which the Constitutional Court of Ukraine is a member, were paid in full. Apart from it, in accordance with Article 44 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity”, the funds of the trade union organisation for mass cultural, physical culture and recreational work were transferred. Expenses for purchase of equipment and items of long-term use (development expenses) amounted to 2,884.5 thous. UAH (or 1.0%), which made it possible to fulfill important tasks in terms of updating the material and technical base of the Constitutional Court of Ukraine.

At the expense of capital expenditures in 2021, equipment for the access control and management system (turnstile) and high-performance multifunctional devices for computer publishing complex were purchased; some outdated and physically worn-out file servers, an application server, uninterruptible power supplies have been replaced; a graphic station was purchased for processing multimedia materials, TVs for arranging the hall for official events (conducting online conferences); computer terminals were

purchased to streamline the exposition; library fund was replenished; a passenger car was purchased to replace obsolete vehicles.

In 2021, on the occasion of the 25th anniversary of the Constitution of Ukraine and the 25th anniversary of the founding of the Constitutional Court of Ukraine, an international conference and national events were held, the vast majority of which took place online due to quarantine restrictions.

In 2021, the Constitutional Court of Ukraine has been granted full budget allocations in accordance with the monthly list of appropriations of the general fund of the state budget.

V. PRIORITY DEVELOPMENT AREAS OF THE CONSTITUTIONAL COURT OF UKRAINE IN 2022

Among the fundamental principles of the activities of the Constitutional Court of Ukraine are the rule of law, independence, collegiality, publicity, openness, full and comprehensive consideration of the case, the validity and binding nature of its decisions and opinions. Further development of the body of constitutional justice aims to achieve a high level of public trust in the Constitutional Court of Ukraine and its decisions, which requires well-balanced, responsible and consistent actions of all key actors of state policy: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the judiciary and judicial self-government.

In 2022, the improvement of the organisational foundations of the Constitutional Court of Ukraine along with its personnel strengthening to achieve global standards of accessibility and effectiveness of a single body of constitutional jurisdiction continues to be relevant. The long process of parliamentary consideration of draft laws on the regulation of the constitutional procedure should finally be completed, providing thus certainty of the content and direction of further development of the mechanisms of constitutional justice in Ukraine.

The improvement of the Court's work should take place in such a way as to ensure the consistency and systemic implementation of the best world practices of constitutional justice, introduce modern technological solutions for organising the work of judges and judicial bodies, expand the possibilities of access to the Court for the protection of constitutional rights and freedoms of an individual and citizen, increase the effectiveness of their protection mechanism.

In the context of the long-term global pandemic of the coronavirus disease COVID-19, there remains a need for legislative regulation of the possibilities for introducing online modes of operation of the Constitutional Court of Ukraine and its bodies, divisions of the Secretariat of the Court, as well as online opportunities for participants in constitutional proceedings to maintain health and minimize the risks of the spread of the disease.

At the same time, the Constitutional Court of Ukraine should gradually update and improve the technical and software base of information technologies (taking into account the possibilities of secure remote access to databases), namely, to improve the reliability and efficiency of the Court's Electronic Document Management System. An important task in 2022 is also the inclusion of the Constitutional Court of Ukraine in

the unified state system of electronic interaction between authorities and the improvement of the organisational foundations for working with electronic documents.

The relevance of the issue of forming an effective mechanism for ensuring the guarantees of the financial independence of the Constitutional Court of Ukraine and compliance with the requirements set out in the Constitution of Ukraine and the Law of Ukraine “On the Constitutional Court of Ukraine” regarding the proper financing of the body of constitutional jurisdiction has been acutely demonstrated during the formation and approval by the Verkhovna Rada of Ukraine of the State Budget of Ukraine for 2022. The fact that the proposals of the Constitutional Court of Ukraine regarding the needs of state funding were not taken into account in full has shown the lack of consistency of the positions formulated by executive and legislative authorities regarding the foundations of financial stability and independence of the Constitutional Court of Ukraine.

Under favourable general political and economic conditions in the future, it is also necessary to decide on the further development of the material and technical base of the Constitutional Court of Ukraine and the completion of the formation of its integral property complex in accordance with previously developed conceptual solutions.

VI. CONSTITUTIONAL COURT OF UKRAINE IN FIGURES

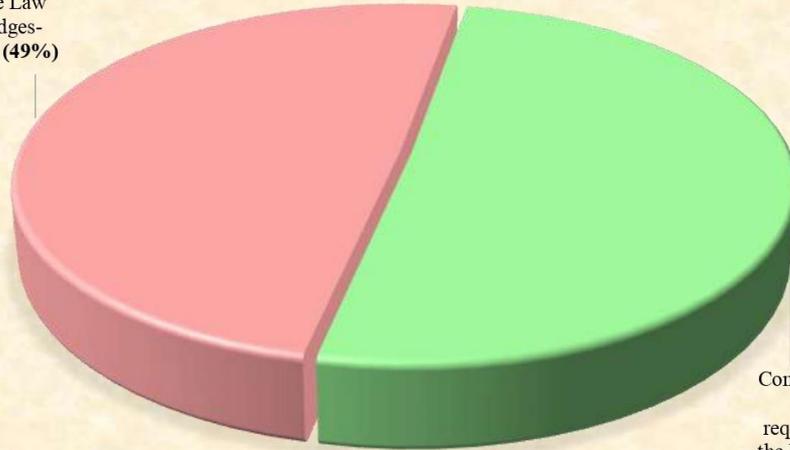
THE CONSTITUTIONAL COURT OF UKRAINE AND ITS BODIES HELD:	
Plenary sessions of the Grand Chamber of the Constitutional Court of Ukraine	117
Sessions of the Grand Chamber of the Constitutional Court of Ukraine	58
Plenary sessions of the First Senate of the Constitutional Court of Ukraine	11
Sessions of the First Senate of the Constitutional Court of Ukraine	11
Plenary sessions of the Second Senate of the Constitutional Court of Ukraine	66
Sessions of the Second Senate of the Constitutional Court of Ukraine	29
Sessions of the Boards of Judges of the First Senate of the Constitutional Court of Ukraine	32
Sessions of the Boards of Judges of the Second Senate of the Constitutional Court of Ukraine	59
Special Plenary Sessions of the Constitutional Court of Ukraine	3
Plenary Sessions of the Constitutional Court dealing with organisational issues	26
Sittings of the Standing Commissions of the Constitutional Court of Ukraine	13
ACTS ADOPTED BY THE CONSTITUTIONAL COURT:	
Decisions of the Grand Chamber of the Constitutional Court of Ukraine:	3
– <i>in the cases upon constitutional petitions;</i>	<i>3</i>
– <i>in the cases upon constitutional complaints.</i>	–
Decisions of the First Senate of the Constitutional Court of Ukraine	–
Decisions of the Second Senate of the Constitutional Court of Ukraine	7

Rulings of the Grand Chamber of the Constitutional Court of Ukraine (at plenary sessions):	7
– <i>on termination of constitutional proceeding in cases</i>	
– <i>other rulings (on merging/separation of constitutional proceedings, on the form of case consideration, on renewal of case consideration, etc.)</i>	3 4
Rulings of the Grand Chamber of the Constitutional Court of Ukraine (at sessions):	350
– <i>on initiating constitutional proceedings in cases</i>	
– <i>on refusal to initiate constitutional proceedings in cases</i>	–
– <i>other rulings (on the extension of the term for the delivering of the decision by the Board of Judges on initiating or refusing to initiate constitutional proceedings on the case, on the form of consideration of the case, on involvement in the consideration of the case, on the self-recusal of a judge, on the temporary involvement of a judge in a non-competent Board of Judges, on the elimination of typographic errors, etc.)</i>	3 347
Rulings of the First Senate of the Constitutional Court of Ukraine (at plenary sessions):	2
– <i>on termination of constitutional proceeding in a case</i>	
– <i>on refusal to consider the case in favour of the Grand Chamber of the Court</i>	–
– <i>on merging constitutional proceedings in cases</i>	1 1
Rulings of the First Senate of the Constitutional Court of Ukraine (at sessions):	10
– <i>on the form of consideration of the case, on the self-recusal of a judge</i>	10
Rulings of the Second Senate of the Constitutional Court of Ukraine (at plenary sessions):	4
– <i>on termination of constitutional proceeding in a case</i>	
– <i>on refusal to consider the case in favour of the Grand Chamber of the Court</i>	3
– <i>on merging constitutional proceedings in cases</i>	– 1
Rulings of the Second Senate of the Constitutional Court of Ukraine (at sessions):	24
– <i>on initiating constitutional proceedings in the case</i>	
– <i>on termination of constitutional proceeding in a case</i>	3
– <i>other rulings (on the temporary involvement of a judge in a non-competent Board of Judges, on the form of consideration of the case, on the self-recusal of a judge, etc)</i>	1 20
Rulings of the boards of of judges of the First Senate of the Constitutional Court of Ukraine:	87
– <i>on initiating constitutional proceedings in the case upon constitutional petition</i>	1
– <i>on initiating constitutional proceedings in the cases upon constitutional complaints</i>	8
– <i>on refusal to initiate constitutional proceedings in the case upon constitutional petition</i>	1
– <i>on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (unanimously)</i>	76
– <i>on the elimination of typographic errors</i>	1
Rulings of the Boards of Judges of the Second Senate of the Constitutional Court of Ukraine:	96
– <i>on initiating constitutional proceedings in the cases upon constitutional petitions</i>	5
– <i>on initiating constitutional proceedings in the cases upon constitutional complaints</i>	5
– <i>on refusal to initiate constitutional proceedings in the case upon constitutional petition</i>	–
– <i>on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (unanimously)</i>	80

– <i>on refusal to initiate constitutional proceedings in the cases upon constitutional complaints (dissenting)</i>	5
– <i>on election of the secretary of the Board of Judges</i>	1
Resolutions adopted at the plenary sessions of the Constitutional Court of Ukraine	2
Resolutions adopted at the sessions of the Constitutional Court of Ukraine	17
DOCUMENTS ADDED TO THE ACTS OF THE CONSTITUTIONAL COURT	
Dissenting opinions of judges of the Constitutional Court:	
– <i>to the decisions of the Grand Chamber of the Court;</i>	20
– <i>to the rulings of the Grand Chamber of the Court;</i>	12
– <i>to the decisions of the Second Senate of the Court</i>	5
– <i>to the decisions of the First Senate of the Court</i>	2
– <i>to the rulings of the Second Seante of the Court.</i>	–
– <i>to the rulings of the Second Seante of the Court</i>	1

Information on the compliance of the constitutional complaints registered in 2021 with the formal requirements established in the Law of Ukraine “On the Constitutional Court of Ukraine”

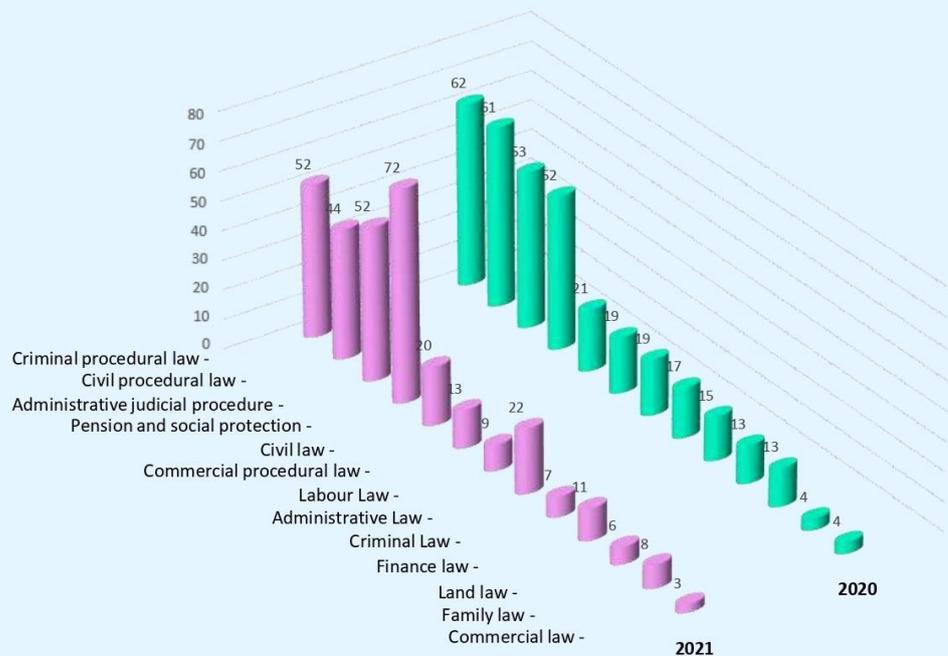
Constitutional complaints meet the formal requirements established by the Law (distributed to judges-rapporteurs) – 239 (49%)



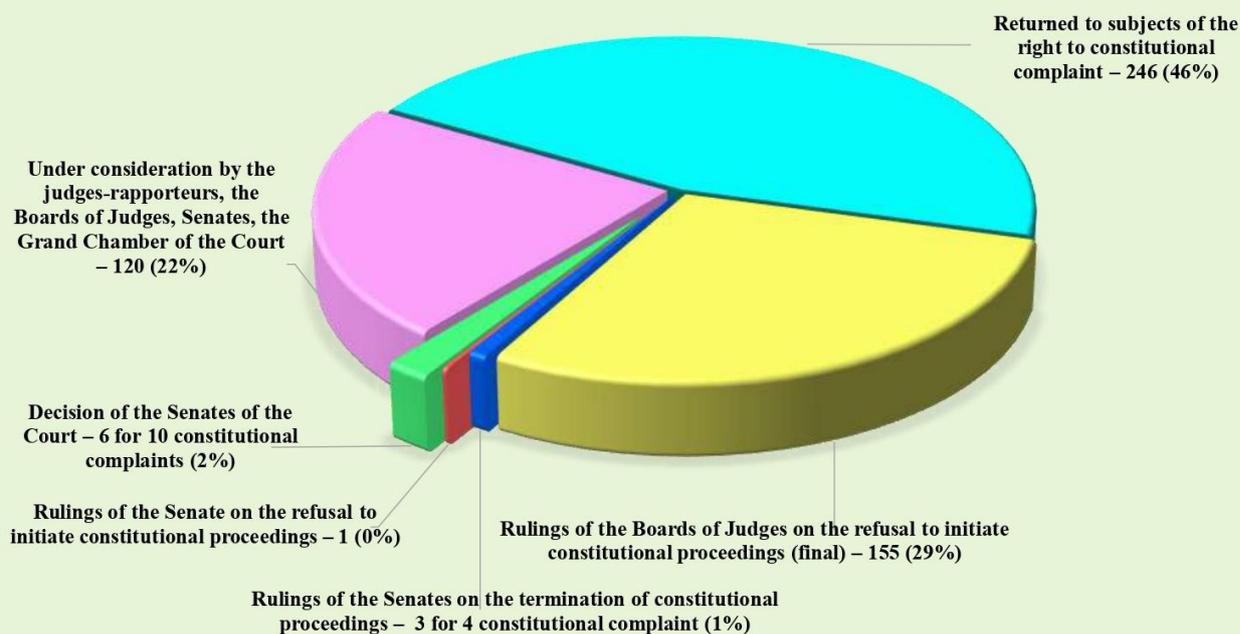
Constitutional complaints do not meet the formal requirements established by the Law (returned to subjects of the right to constitutional complaint) – 245 (51%)

The total number of constitutional complaints – 484

Issues most frequently raised by the subjects of the right to constitutional complaint in 2020 and 2021



Processing, consideration of constitutional complaints of previous years (remainder) and registered in 2021 in the Constitutional Court of Ukraine



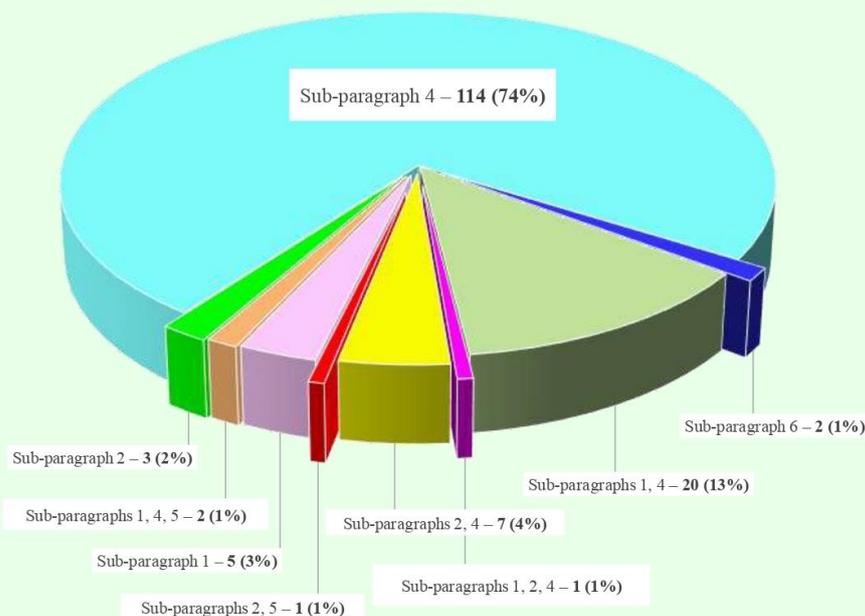
Total number of constitutional complaints – 536

Laws of Ukraine (separate provisions thereof), which were often impugned by subjects of the right to constitutional complaint in 2021, distributed among the judges of the Constitutional Court of Ukraine



Diagram 5

Information on the grounds for refusal to initiate constitutional proceedings in cases upon constitutional complaints in accordance with Article 62.1 of the Law of Ukraine "On the Constitutional Court of Ukraine", provided in the rulings of the Boards of Judges of the Court in 2021



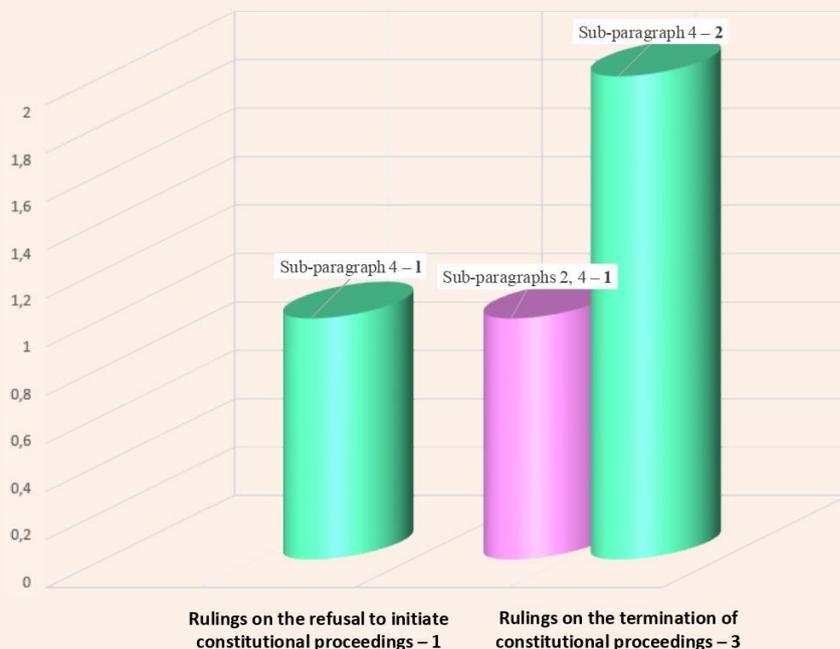
The total number of rulings on refusal delivered by the Boards of Judges of the Court (unanimously) – 155

Among the grounds for refusal to initiate constitutional proceedings in case are:

- Sub-paragraph 1** – application submitted to the Court by an inappropriate subject;
- Sub-paragraph 2** – issues raised in the constitutional petition, constitutional appeal, or the constitutional complaint fall beyond the Court’s competence;
- Sub-paragraph 3** – non-compliance of a constitutional petition or a constitutional appeal with the requirements set forth by this Law;
- Sub-paragraph 4** – inadmissibility of a constitutional complaint;
- Sub-paragraph 5** – invalidation of the act (specific provisions thereof), conformity of which to the Constitution of Ukraine has been raised, except as provided by paragraph 2 Article 8 of this Law;
- Sub-paragraph 6** – existence of a decision or an opinion by the Court in respect of the same subject matter of a constitutional petition, constitutional appeal, constitutional complaint, as well as of rulings by the Court to reject constitutional proceedings in the case or to terminate constitutional proceedings in the case, where adopted pursuant to sub-paragraphs 1, 2 of this paragraph.

Diagram 6

Information on the grounds for refusal to initiate and terminate constitutional proceedings in cases upon constitutional complaints in accordance with Article 62.1 and Article 63.4 of the Law of Ukraine "On the Constitutional Court of Ukraine" in rulings (final) of the Senates of the Court in 2021



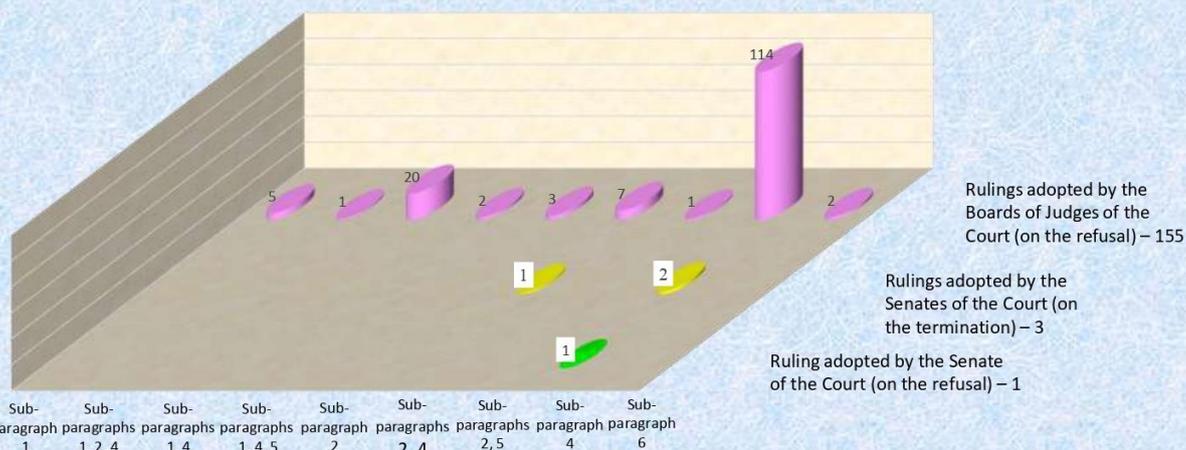
Among the grounds for the refusal to initiate constitutional proceedings in case are:

- Subparagraph 2 –
- Subparagraph 4 – inadmissibility of a constitutional complaint;

The ground for the termination of constitutional proceedings in case

The Senate or the Grand Chamber shall terminate constitutional proceedings in the case, if any grounds for rejection of constitutional proceedings, as stipulated by Article 62 of this Law, have been discovered during a plenary session.

Information on the grounds for refusal to initiate and termination of constitutional proceedings in cases upon the constitutional complaints in accordance with Article 62.1 “On the Constitutional Court of Ukraine” in rulings (final) adopted by the Senates and Boards of Judges of the Court in 2021



Among the grounds for refusal to initiate constitutional proceedings in case are:

- Sub-paragraph 1** – application submitted to the Court by an inappropriate subject;
- Sub-paragraph 2** – issues raised in the constitutional petition, constitutional appeal, or the constitutional complaint fall beyond the Court’s competence;
- Sub-paragraph 3** – non-compliance of a constitutional petition or a constitutional appeal with the requirements set forth by this Law;
- Sub-paragraph 4** – inadmissibility of a constitutional complaint;
- Sub-paragraph 5** – invalidation of the act (specific provisions thereof), conformity of which to the Constitution of Ukraine has been raised, except as provided by paragraph 2 Article 8 of this Law;
- Sub-paragraph 6** – existence of a decision or an opinion by the Court in respect of the same subject matter of a constitutional petition, constitutional appeal, constitutional complaint, as well as of rulings by the Court to reject constitutional proceedings in the case or to terminate constitutional proceedings in the case, where adopted pursuant to sub-paragraphs 1, 2 of this paragraph.

INFORMATION REPORT
OF THE CONSTITUTIONAL COURT OF UKRAINE

2021

*Approved by the Resolution of the Constitutional Court of Ukraine No. 13-n/2021 of
June 16, 2022*

The Information Report of the Constitutional Court of Ukraine highlights the most important aspects of the work of the Constitutional Court of Ukraine in 2021. 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 petitions, 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.