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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

JUDGEMENT
OF THE CONSTITUTIONAL COURT OF UKRAINE

30 September 2010



IN THE NAME OF UKRAINE

J U D G E M E N T
OF THE CONSTITUTIONAL COURT OF UKRAINE

in the case upon the constitutional petition of 252 People's Deputies of Ukraine concerning the conformity of the Constitution of Ukraine (constitutionality) with Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" of 8 December 2004 No. 2222-IV (the case upon the observance of the procedure of introducing amendments to the Constitution of Ukraine)

Kyiv

Case No. 1-45/2010

30 September 2010
No. 20-pn/2010

The Constitutional Court of Ukraine consisting of the judges:

Holovin Anatolii Serhiiiovych – the chairman,
Baulin Yurii Vasyliiovych,
Bryntsev Vasylii Dmytrovych,
Vdovychenko Sergii Leonidovych – judge-speaker C:\Documents and Settings\Me\Local Settings\Temp\Word_0,
Vinokurov Sergii Markiiianovych,
Hultai Mykhailo Myroslavovych,
Zaporozhets Mykhailo Petrovych,
Kamp Volodymyr Mykhailovych,
Kolos Mykhailo Ivanovych,
Lylak Dmytro Dmytrovych,
Markush Mariia Andriivna,
Ovcharenko Viacheslav Andriiovych,
Serheichuk Oleh Anatoliiiovych,
Stetsiuk Petro Bohdanovych,
Stryzhak Andrii Andriiovych,
Tkachuk Pavlo Mykolaiovych,
Shaptala Nataliia Kostiantynivna,
Shyshkin Viktor Ivanovych,

With the participation of representatives of the subject of the right to constitutional petition Zabarskyi Vladyslav Valeriiiovych, Shpenov Dmytro Yuriiiovych – People's Deputies of Ukraine, the representative of the Verkhovna Rada of Ukraine Vilamova Nataliia Oleksandrivna, the representative of the President of Ukraine to the Constitutional Court of Ukraine Lukash Olena Leonidivna, the permanent representative of the Cabinet of Ministers of Ukraine to the Constitutional Court of Ukraine Vozniuk Volodymyr Denysovych
Considered at the plenary session the case upon the constitutional petition of 252 People's Deputies of Ukraine concerning the conformity of the Constitution of Ukraine (constitutionality) with Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" of 8 December 2004 No. 2222-IV (Vidomosti of the Verkhovna Rada of Ukraine, 2005, No. 2, Art.

44).

The consideration of the case in accordance with Articles 39, 40 of the Law of Ukraine “On the Constitutional Court of Ukraine” was caused by the constitutional petition of 252 People’s Deputies of Ukraine.

The grounds for considering the case in accordance with Article 71 of the Law of Ukraine “On the Constitutional Court of Ukraine” is the assertion of the subject of the right to constitutional petition upon the inconformity of the Constitution of Ukraine (unconstitutionality) with Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine” of 8 December 2004 No. 2222–IV.

Having heard the judge-speaker Vdovichenko S. L., explanations of Zabarskyi V. V., Shpenov D. Yu., Vilamova N. O., Lukash O. L., Vozniuk V. D. and having investigated the materials of the case, the Constitutional Court of Ukraine

e s t a b l i s h e d

1. The subject of the right to constitutional petition – 252 People’s Deputies of Ukraine – applied to the Constitutional Court of Ukraine with a request to recognize Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine” of 8 December 2004 No. 2222–IV (hereinafter referred to as “Law No. 2222”) as such that does not conform to the Constitution of Ukraine (is unconstitutional).

According to the authors of the request, the grounds for the recognition of the unconstitutionality of Law No. 2222 as a whole is a violation of the procedure, established by the Constitution of Ukraine, of its consideration and approval, as the corresponding draft law of Ukraine “On Introducing Amendments to the Constitution of Ukraine” of 19 September 2003 with registration No. 4180 (hereinafter referred to as “Draft Law No. 4180”) with amendments was considered and approved by the Verkhovna Rada of Ukraine as Law No. 2222 in this case without an obligatory opinion of the Constitutional Court of Ukraine concerning the conformity of the draft law on introducing amendments to the Constitution of Ukraine with the requirements of Articles 157 and 158 of the Constitution of Ukraine (Article 159 of the Fundamental Law of Ukraine).

According to the People’s Deputies of Ukraine, the amendments, introduced in such a manner in the Constitution of Ukraine, led to a violation of Article 1, parts 2, 3, 4 of Article 5, Article 6, part 1 of Article 8, part 2 of Article 19, point 1 of part 1 of Article 85, Article 159 of the Fundamental Law of Ukraine.

The subject of the right to constitutional petition accents that the Verkhovna Rada of Ukraine, adopting Law No. 2222, had the right to consider Draft Law No. 4180 in respect of which the opinion of the Constitutional Court of Ukraine has been rendered, and adopt the corresponding law on introducing amendments to the Constitution of Ukraine without introducing any amendments, and in the event of their introduction – only after the rendering of the opinion by the Constitutional Court of Ukraine that the draft law with the amendments introduced therein meets the requirements of Articles 157 and 158 of the Constitution of Ukraine. The People’s Deputies of Ukraine remark that, compared with Draft Law No. 4180 with the amendments introduced therein in respect of which the Constitutional Court of Ukraine rendered Opinion of 12 October 2004 No. 2-В/2004, the following amendments in Law No. 2222 are available:

“1) In point 1 of Chapter I:

In paragraph 1, the figures “120” are excluded from the list of the Articles of the Constitution of Ukraine, stated by the mentioned point in a new wording;

A new wording of Articles 78, 81, 85, 90 of the Constitution of Ukraine is amended, and notably:

In part 1 of a new wording of Article 78, the words “except for the cases provided for by this Constitution” are excluded;

In part 2 of a new wording of Article 78, the words “(except for the posts of members of the Cabinet of Ministers of Ukraine)” are excluded;

In point 6 of part 2 and in part 6 of a new wording of Article 81, the word “(exceptions)” is excluded;

In point 22 of part 1 of a new wording of Article 85, the words “of the Armed Forces of Ukraine, the Security Service of Ukraine, other military formations created in accordance with the laws of Ukraine” are replaced by the words “of the Security Service of Ukraine, the Armed Forces of Ukraine, other military formations created in accordance with the laws of Ukraine”;

In point 26 of part 1 of a new wording of Article 85, the words “of one-half of the composition of the Constitutional Court of Ukraine” are replaced by the words “one-third of the composition of the Constitutional Court of Ukraine”;

A new wording of Article 90 is amended by adding a new part 4 in the following terms:

“The authority of the Verkhovna Rada of Ukraine that is elected at special elections conducted after the pre-term termination by the President of Ukraine of authority of the Verkhovna Rada of Ukraine of the previous convocation may not be terminated within one year from the day of its election”.

In this respect, part 4 of a new wording of Article 90 (under the draft law) in a new wording of this Article in the Law became part 5;

In part 5 of a new wording of Article 90 (that was part 4 of a new wording of Article 90 in the draft law), the words “last six months of the term of authority of the Verkhovna Rada of Ukraine and the President of Ukraine” are replaced by the words “last six months of the term of authority of the Verkhovna Rada of Ukraine or the President of Ukraine”;

Also the statement of Article 120 of the Constitution of Ukraine in a new wording is excluded from point 1 of Chapter I of the Law, instead, a new point 8 of Chapter I, by which only part 1 of Article 120 of the Constitution of Ukraine is stated in a new wording, appeared in the Law.

At the same time, the words “except for the cases provided for by part 2 of this Article and” are excluded from the wording of this part, part 2 of a new wording of Article 120, provided for by the draft law (“Members of the Cabinet of Ministers of Ukraine may not combine their posts with a mandate of a People’s Deputy of Ukraine”), is completely excluded;

In point 1 of Chapter I of the Law, the words “Chapter VI. THE CABINET OF MINISTERS OF UKRAINE. OTHER BODIES OF EXECUTIVE POWER” are also excluded;

2) In point 4 of Chapter I of the Law, a new wording of part 4 of Article 94 of the Constitution of Ukraine after the words “is urgently officially promulgated by the Head of the Verkhovna Rada of Ukraine” is amended by adding the words “and published”;

3) Point 5 of Chapter I of the Law is an editorial combination of provisions of paragraph 1 and subpoint “a” of point 5 of Chapter I of the draft law;

4) In point 6 of Chapter I:

Paragraph 1 of point 6 is an editorial combination of paragraph 1, 2 and 10 of point 6 of

Chapter I of the draft law, the figures "8-13," "15," "16" being replaced by the figures "8-16";

The paragraph "point 14 shall be excluded" is excluded;

A new wording of points of Article 106 of the Constitution of Ukraine is amended:

The wording of point 12 of part 1 of Article 106, provided for in the draft law, is stated as point 14 in the Law, the words "petition upon the appointment to office of the Head of Security Service of Ukraine" being replaced by the words "petition upon the appointment to office and dismissal from office of the Head of Security Service of Ukraine";

Part 1 is amended by adding a new point in the following terms:

"12) appoints to office and dismisses from office one-half of the composition of the Council of the National Bank of Ukraine";

In a new wording of point 22 of part 1, the words "one-half of the composition of the

Constitutional Court of Ukraine" are replaced by the words "one-third of the composition of the Constitutional Court of Ukraine";

5) in subpoint "a" of point 7 of Chapter I, the wording of points of Article 116 of the Constitution of Ukraine is amended:

In point 9², the words "heads of local state administrations" are excluded;

The provision on the addition of point 9³ to Article 116 of the Constitution of Ukraine in the following terms is excluded:

"9³) appoints to office and dismisses from office one-half of the composition of the Council of the National Bank of Ukraine";

Accordingly, also in paragraph 1 the words and figures "by points 9¹, 9² and 9³" are replaced by the words and figures "by points 9¹ and 9²";

6) In the Law, point 8 of Chapter I of the draft law is excluded by which parts 4, 8-10 of Article 118 of the Constitution of Ukraine were stated in the following wording:

"Heads of local state administrations shall be appointed to office and dismissed from office by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine";

"Decisions of the heads of local state administrations that contravene the Constitution and the laws of Ukraine, other acts of legislation of Ukraine, may be revoked by the President of Ukraine or by the head of the local state administration of a higher level, in accordance with the law.

An oblast or district council may express no confidence in the head of the respective local state administration, on the grounds of which the President of Ukraine adopts a decision and provides a substantiated reply.

If two-thirds of the deputies of the composition of the respective council express no confidence in the head of a district or oblast state administration, the President of Ukraine adopts a decision on the resignation of the head of the local state administration.”

Instead, as it was already mentioned above, the other norm – amendments to part 1 of Article 120 of the Constitution of Ukraine – is included in point 8 of Chapter I of the Law;

7) In point 10 of Chapter I, a new wording of part 1 of Article 122 of the Constitution of Ukraine after the word “Prosecutor’s Office” is amended by adding the word “of Ukraine”;

8) The provision of point 11 of Chapter I of the draft law on the statement of point 2 of part 5 of Article 126 of the Constitution of Ukraine in the following wording is excluded in the Law:

“2) the attainment of the age of sixty-five by the judge, and the age of seventy years by the judges of the Constitutional Court of Ukraine and the Supreme Court of Ukraine.”

In this respect, point 12 of the draft law is renumbered in the Law to point 11;

9) The provision of point 13 of Chapter I of the draft law, by which part 2 of Article 148 of the Constitution of Ukraine was stated in the following wording, is excluded in the Law:

“The President of Ukraine, the Verkhovna Rada of Ukraine each appoint nine judges to the Constitutional Court of Ukraine.”;

10) in Chapter II “Final and Transitional Provisions” of the Law:

Point 1 is stated in a new wording essentially different from the draft law;

The provisions of points 4-9 are excluded.

Substantiating its request, the subject of the right to constitutional petition refers to the legal positions of the Constitutional Court of Ukraine, stated in judgements of 9 June 1998 No. 8-пн/98 in the case upon introducing amendments to the Constitution of Ukraine, of 27 March 2000 No. 3-пн/2000 in the case upon All-Ukrainian referendum on a popular initiative, of 5 October 2005 No. 6-пн/2005 in the case upon the exercise of authority by the people, of 26 June 2008 No. 13-пн/2008 in the case upon the authority of the Constitutional Court of Ukraine.

2. The President of Ukraine, the Head of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the Ministry of Justice of Ukraine, scientists of V. M. Koretskyi Institute of State and Law of the National Academy of Sciences of Ukraine, Taras Shevchenko National University of Kyiv, Yaroslav Mudryi National Legal Academy of Ukraine, the Odesa National Academy of Law expressed their positions upon the subject of the constitutional petition.

3. The Constitutional Court of Ukraine, solving the issues raised in the constitutional petition, proceeds from the following.

3.1. Ukraine is a democratic, law-based state in which the principle of the rule of law is recognised and effective (Article 1, part 1 of Article 8 of the Constitution of Ukraine).

The Constitution of Ukraine has the highest legal force; laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it (part 2 of Article 8 of the Fundamental Law of Ukraine). The mentioned requirements also concern the introduction of amendments to the Constitution of Ukraine.

Principles of the division of state power into legislative, executive and judicial power, the exercise of authority by the bodies of state power on the grounds, within the limits of, and in the

manner envisaged by the Constitution and the laws of Ukraine (Article 6, part 2 of Article 19) are provided for in the Fundamental Law of Ukraine.

The sole body of legislative power in Ukraine is the Parliament – the Verkhovna Rada of Ukraine (Article 75 of the Constitution of Ukraine). The authority of the Verkhovna Rada of Ukraine to introduce amendments to the Constitution of Ukraine is defined in point 1 of part 1 of Article 85 of the Constitution of Ukraine, but solely within the limits of, and in the procedure provided for by Chapter XIII of the Constitution of Ukraine.

3.2. According to Article 159 of the Fundamental Law of Ukraine, the draft law on introducing amendments to the Constitution of Ukraine is considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine concerning its conformity with the requirements of Articles 157 and 158 of the Constitution of Ukraine. The special procedure of the consideration of the draft law on introducing amendments to the Constitution of Ukraine, provided for by Article 159 of the Constitution of Ukraine, is aimed at preventing the introduction of amendments to the Fundamental Law of Ukraine contrary to the requirements of Articles 157 and 158 of the Constitution of Ukraine.

According to the official interpretation of the provisions of Article 159 of the Constitution of Ukraine, provided by the Constitutional Court of Ukraine in Judgement of 9 June 1998 No. 8-пн/98 in the case upon introducing amendments to the Constitution of Ukraine, “in the event of introducing amendments, in the course of consideration in the Verkhovna Rada of Ukraine, to the draft law, it shall be adopted by the Verkhovna Rada of Ukraine, subject to the availability of an opinion of the Constitutional Court of Ukraine that the draft law with the amendments introduced therein meets the requirements of Articles 157 and 158 of the Constitution of Ukraine” (paragraph 2 of point 2 of the resolution part). At the same time, the Constitutional Court of Ukraine specified in the mentioned judgement that, according to Article 159 of the Constitution of Ukraine, not only the draft law, submitted to the Verkhovna Rada of Ukraine in accordance with Articles 154, 155 and 156 of the Constitution of Ukraine, shall be subject to the obligatory verification upon the conformity with Articles 157 and 158 of the Constitution of Ukraine, but also all possible amendments introduced therein in the course of its consideration at the plenary session of the Verkhovna Rada of Ukraine. The draft law which, under the opinion of the Constitutional Court of Ukraine, met the requirements of Articles 157 and 158 of the Constitution of Ukraine and to which amendments were introduced in the course of consideration at the plenary session of the Verkhovna Rada of Ukraine, shall also be subject to verification by the Constitutional Court of Ukraine upon the conformity of this draft law with the requirements of the mentioned Articles of the Constitution of Ukraine before its adoption as a law on introducing amendments to the Constitution of Ukraine (paragraphs 6, 7 of point 3 of the motivation part).

Thus, under the Fundamental Law of Ukraine, the availability of a corresponding opinion of the Constitutional Court of Ukraine is an obligatory condition for the consideration of the draft law on introducing amendments to the Constitution of Ukraine at the plenary session of the Verkhovna Rada of Ukraine. The exercise, by the Constitutional Court of Ukraine, of the preliminary (preventive) control over the conformity of such draft law with the requirements, established by Articles 157 and 158 of the Constitution of Ukraine, with all possible amendments, introduced therein in the course of consideration at the plenary session of the Verkhovna Rada of Ukraine, is an integral stage of the constitutional procedure of introducing amendments to the Fundamental Law of Ukraine.

3.3. According to part 1 of Article 152 of the Constitution of Ukraine, laws under the judgement of the Constitutional Court of Ukraine shall be deemed to be unconstitutional completely or in a separate part if they do not conform to the Constitution of Ukraine or if the procedure of their consideration, approval or their entry into force established by the Constitution of Ukraine has been violated.

The Constitutional Court of Ukraine in Judgement of 26 June 2008 No. 13-пр/2008 in the case upon the authority of the Constitutional Court of Ukraine came to an opinion that the Constitutional Court of Ukraine should exercise the further constitutional control and concerning the law on introducing amendments to the Constitution of Ukraine after its entry into force, as the absence of the judicial control over the procedure of its consideration and approval, defined in Chapter XIII of the Constitution of Ukraine, may result in the restriction or cancellation of rights and freedoms of a person and citizen, the liquidation of independence or the violation of the territorial integrity of Ukraine or the change of the constitutional order in a manner not provided for by the Fundamental Law of Ukraine (paragraph 3 of subpoint 3.2 of point 3 of the motivation part).

4. Solving the issue raised in the constitutional petition, the Constitutional Court of Ukraine proceeds on the basis that not the purview of Law No. 2222 shall be subject to the constitutional control, but the procedure of its consideration and approval established by the Constitution of Ukraine. A similar approach was applied by the Constitutional Court of Ukraine in Judgement of 7 July 2009 No. 17-пр/2009 in the case upon the constitutionally established procedure of entry into force of the law. Law of Ukraine "On Introducing Amendments to Some Laws of Ukraine on the Authority of the Constitutional Court of Ukraine, Specific Features of the Proceedings in the Cases upon Constitutional Petitions and the Prevention of the Misuse of the Right to Constitutional Petition" of 19 March 2009 No. 1168-VI was recognized to be unconstitutional by the mentioned Judgement.

The Constitutional Court of Ukraine rendered Opinion No. 3-в/2003 concerning the conformity of Draft Law No. 4180 with the requirements of Articles 157 and 158 of the Constitution of Ukraine in the case upon introducing the amendments to Articles 76, 78, 81, 82 and others to the Constitution of Ukraine on 10 December 2003.

In the course of the completion of Draft Law No. 4180 and its preliminary approval on 23 June 2004, amendments were introduced by the majority of the constitutional composition of the Verkhovna Rada of Ukraine, including additions, clarifications of formulations of instructions and editorial amendments. The Constitutional Court of Ukraine rendered Opinion of 12 October 2004 No. 2-в/2004 on Draft Law No. 4180 with the amendments introduced therein on 23 June 2004.

During the further consideration of Draft Law No. 4180 by the Verkhovna Rada of Ukraine, amendments (changes) were introduced to it again. However, the amended Draft Law No. 4180 was not sent by the Verkhovna Rada of Ukraine to the Constitutional Court of Ukraine for rendering an opinion concerning its conformity with the requirements of Articles 157 and 158 of the Constitution of Ukraine, and was considered and approved by it on 8 December 2004 as Law No. 2222.

The analysis of Draft Law No. 4180, concerning which the Constitutional Court of Ukraine rendered Opinion of 12 October 2004 No. 2-в/2004, and of Law No. 2222 allows to ascertain that the provisions of part 4 of Article 90, point 12 of part 1 of Article 106, which were not contained in Draft Law No. 4180 that was under examination in the Constitutional Court of Ukraine, were introduced by Law No. 2222 to the Constitution of Ukraine.

Changed by Law No. 2222 provisions of parts 1, 2 of Article 78, point 6 of part 2, part 6 of Article 81, point 26 of part 1 of Article 85, part 4 of Article 90, part 4 of Article 94, points 14, 22 of part 1 of Article 106, point 9² of Article 116, part 1 of Article 120 of the Constitution of Ukraine meaningfully differ compared with Draft Law No. 4180. From the amendments to the Constitution of Ukraine, proposed by Draft Law No. 4180, the Verkhovna Rada of Ukraine excluded the provisions on the addition of point 9³ to Article 116, parts 4, 8, 9, 10 to Article 118, part 2 to Article 120, point 2 of part 5 to Article 126, part 2 to Article 148 of the Constitution of Ukraine.

From the analysis of Law No. 2222 and Draft Law No. 4180, one also sees in Law No. 2222 an availability of editorial additions, corrections and clarifications partly caused by the mentioned meaningful changes and requirements of the rules of legislative techniques. In such a manner, point 22 of part 1 of Article 85, part 1 of Article 122 of the Constitution of Ukraine and paragraph 1 of point 1, subpoint "a" of point 6, subpoint "a" of point 7, points 8, 10, 11 of Chapter I of Law No. 2222 are amended.

Besides, from point 1 of Chapter I of Draft Law No. 4180 the words "CHAPTER VI. THE CABINET OF MINISTERS OF UKRAINE. OTHER BODIES OF EXECUTIVE POWER" are excluded and from subpoint "a" of point 6 of Chapter I – paragraph 9: "point 14 shall be excluded."

Differences are available both in the provisions directly concerning the amendments to the Constitution of Ukraine and in provisions of Chapter II "Final and Transitional Provisions" of Law No. 2222. In particular, point 1 of Chapter II is stated in a new wording, and points 4, 5, 6, 7, 8, 9, provided for by Draft Law No. 4180, are excluded.

Thus, on 8 December 2004 the Verkhovna Rada of Ukraine considered Draft Law No. 4180 with amendments, concerning which the Constitutional Court of Ukraine did not render an opinion, and approved Law No. 2222, whereby it violated the requirements of part 2 of Article 19, Article 159 of the Constitution of Ukraine.

5. According to part 2 of Article 19 of the Constitution of Ukraine, bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

In the Constitution of Ukraine, the authority of the Verkhovna Rada of Ukraine on introducing amendments to the Constitution of Ukraine in accordance with the procedure, provided for by Chapter XIII (point 1 of part 1 of Article 85), and adopting laws (point 3 of part 1 of Article 85) under the procedure, established by its Articles 91, 93, is separately established. So, the mentioned authority of the Verkhovna Rada of Ukraine is independent and differs under the constitutional procedure of its implementation.

According to Article 91 of the Fundamental Law of Ukraine, the Verkhovna Rada of Ukraine adopts laws, regulations and other acts by the majority of its constitutional composition, except for the cases provided for by the Constitution of Ukraine. Instead, the draft law on introducing amendments to the Constitution of Ukraine, except for Chapter I "General principles," Chapter III "Elections. Referendum" and Chapter XIII "Introducing Amendments to the Constitution of Ukraine," preliminary approved by the majority of the constitutional composition of the Verkhovna Rada of Ukraine, is deemed to be adopted if at the next regular session of the Verkhovna Rada of Ukraine not less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favour thereof (Article 155 of the Fundamental Law of Ukraine).

The observance of the procedure, established by the Constitution of Ukraine, of consideration, approval and entry into force of laws, including also the laws on introducing amendments to the Constitution of Ukraine, is one of conditions of legitimacy of legislative process.

The Verkhovna Rada of Ukraine by one (simultaneous) voting on 8 December 2004 adopted Law No. 2222 along with Regulation of the Verkhovna Rada of Ukraine "On the preliminary approval of the draft law on introducing amendments to the Constitution of Ukraine" No. 2223-IV and Law of Ukraine "On Specific Features of the Application of the Law of Ukraine 'On the Elections of the President of Ukraine' in Repeated Voting on 26 December 2004 No. 2221-IV. The simultaneous adoption of individual legal acts, the subject of regulation of which and the

procedures of their consideration and approval, defined in Articles 91, 155 of the Constitution of Ukraine, are different, testifies to the violation, by the Verkhovna Rada of Ukraine, of part 2 of Article 19 of the Constitution of Ukraine in adopting Law No. 2222.

The European and domestic public institutes, in particular Parliamentary Assembly of the Council of Europe, the National Commission for the Strengthening of Democracy and the Rule of Law, the European Commission for Democracy Through Law (the Venice Commission) remarked in their opinions upon the non-observance of the constitutional procedure of the consideration and approval of Law No. 2222. In their opinion, this procedure was introduced with a violation of principles of the democratic state and the rule of law. In the documents of the mentioned organizations, the question is about such violations as the consideration by the Verkhovna Rada of Ukraine of the final text of Draft Law No. 4180 without an opinion of the Constitutional Court of Ukraine, simultaneous voting for the adoption of several normative legal acts.

For example, point 14 of Resolution of Parliamentary Assembly of the Council of Europe of 5 October 2005 No. 1466 "On implementation of obligations and commitments by Ukraine" specifies: "the Parliamentary Assembly is also concerned that new constitutional changes were approved without the preliminary examination by the Constitutional Court, as provided for by Article 159 of the Ukrainian Constitution and as interpreted in the judgement of the Constitutional Court of Ukraine of 1998."

The Opinion of the National Commission for the Strengthening of Democracy and the Rule of Law, approved on 27 December 2005 specifies that the consideration and adoption of Law No. 2222 was carried out by the Verkhovna Rada of Ukraine with a violation of requirements of Article 159 of the Constitution of Ukraine.

Thus, the Verkhovna Rada of Ukraine adopted Law No. 2222 without observing the procedure of its consideration and approval, established by the Constitution of Ukraine, whereby it violated the provisions of its part 2 of Article 6, part 2 of Article 19, point 1 of part 1 of Article 85, Article 159.

6. The Constitution of Ukraine has the highest legal force, and its norms are norms of direct effect (Article 8 of the Constitution of Ukraine). The Fundamental Law of the state guarantees the sovereignty of Ukraine, its territorial integrity, the rights and freedoms of a person and citizen, the prevention of their cancellation or narrowing of the meaning and volume, the provision of legal order in Ukraine according to which bodies of state power, bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine (Articles 2, 19, 21, 22).

The grounds for the termination of the law as a whole or its individual provisions, in particular, is the recognition of the law, individual provisions as such that are terminated by the sole body of legislative power in Ukraine the Verkhovna Rada of Ukraine, or recognition of them as such that do not conform to the Constitution of Ukraine (is unconstitutional) by the sole body of constitutional jurisdiction in Ukraine – the Constitutional Court of Ukraine.

Part 2 of Article 152 of the Constitution of Ukraine stipulates that laws, other legal acts or their individual provisions that are deemed to be unconstitutional, shall cease to apply on the day of the approval, by the Constitutional Court of Ukraine, of the judgement on their unconstitutionality. Being guided by the mentioned norm, the Constitutional Court of Ukraine in approving Judgement of 24 December 1997 No. 8-3п specified that "laws, other legal acts shall be effective till the recognition of their unconstitutionality by an individual judgement of the body of constitutional control (paragraph 3 of point 4 of the motivation part).

The Constitutional Court of Ukraine proceeds on the basis that the recognition as unconstitutional of Law No. 2222 in connection with a violation of the procedure of its consideration and approval means the renewal of the previous wording of the norms of the Constitution of Ukraine, which were amended and excluded by Law No. 2222. This ensures the stability of the constitutional order in Ukraine, guaranteeing of constitutional rights and freedoms of a person and citizen, the integrity, inviolability and continuity of the Constitution of Ukraine, its supremacy as the Fundamental Law of the state throughout the entire territory of Ukraine.

The similar legal effects occurred after the approval of Judgement of the Constitutional Court of Ukraine of 7 July 2009 No. 17-пн/2009 in the case upon constitutionally established procedure of entry into force of a law, as a result of which the provisions of the Law of Ukraine "On the Constitutional Court of Ukraine" renewed their validity in the previous wording.

As was specified by the Constitutional Court of Ukraine in paragraph 3 of point 4 of the motivation part of Judgement of 14 December 2000 No. 15-пн/2000, "judgements of the Constitutional Court of Ukraine are judgements of direct effect and do not require confirmations of any bodies of state power. The obligation to implement the judgement of the Constitutional Court of Ukraine is a requirement of the Constitution of Ukraine (part 2 of Article 150), which has the highest legal force with respect to all other normative legal acts (part 2 of Article 8)."

According to part 2 of Article 70 of the Law of Ukraine "On the Constitutional Court of Ukraine," if necessary, the Constitutional Court of Ukraine has the right to determine in its judgement the procedures and terms of their implementation and impose on respective state bodies an obligation to ensure this implementation. Paragraph 6 of point 4 of the motivation part of Judgement of 14 December 2000 No. 15-пн/2000 specifies that "additional definition, in the judgements, opinions of the Constitutional Court of Ukraine, of the procedures of their implementation does not cancel or substitute the general obligatoriness of their implementation. Whether instructions concerning the procedures of their implementation are available in judgements, opinions of the Constitutional Court of Ukraine or not, the relevant laws, other legal acts or their individual provisions, recognized under these judgements to be unconstitutional, shall not be subject to application as such that terminated on the day of approval, by the Constitutional Court of Ukraine, of a judgement on their unconstitutionality."

Being guided by part 2 of Article 70 of the Law of Ukraine "On the Constitutional Court of Ukraine," the Constitutional Court of Ukraine considers it necessary to impose on bodies of state power an obligation concerning an urgent implementation of this Judgement on the harmonization of normative legal acts with the Constitution of Ukraine of 28 June 1996 in the wording that existed before the introduction of amendments therein by Law No. 2222.

Given the above and pursuant to Articles 147, 150, part 1, 2 of Article 152, Article 153 of the Constitution of Ukraine, Articles 51, 63, 65, 67, 69, 70, 73 of the Law of Ukraine "On the Constitutional Court of Ukraine," the Constitutional Court of Ukraine

rendered the judgement:

1. To recognize Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" of 8 December 2004 No. 2222-IV as such that does not conform to the Constitution of Ukraine (is unconstitutional) in connection with a violation of the constitutional procedure of its consideration and adoption.

2. Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" of 8 December 2004 No. 2222-IV, recognized to be unconstitutional, terminates on the day of the approval, by the Constitutional Court of Ukraine, of this Judgement.

3. According to part 2 of Article 70 of the Law of Ukraine "On the Constitutional Court of

Ukraine,” to impose on bodies of state power an obligation concerning an urgent implementation of this Judgement on the harmonization of normative legal acts with the Constitution of Ukraine of 28 June 1996 in the wording that existed before the introduction of amendments therein by Law No. 2222.

4. The Judgement of the Constitutional Court of Ukraine shall be compulsory in the territory of Ukraine, final and may not be appealed.

The Judgement of the Constitutional Court of Ukraine shall be subject to promulgation in “Visnyk of the Constitutional Court of Ukraine” and other official publications of Ukraine.

CONSTITUTIONAL COURT OF UKRAINE