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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Ukraine** as well as précis published in the Bulletin on Constitutional Case-Law

Ukraine
Constitutional Court

Introduction

1. Date and context of establishment

The Constitutional Court of Ukraine is the sole body with constitutional jurisdiction in Ukraine (Article 147 of the Ukrainian Constitution). The need to maintain the supremacy of the Ukrainian Constitution as the fundamental Law in Ukraine and the creation of a reliable system of constitutional control in the State were the main motives for founding the Constitutional Court of Ukraine.

In Ukraine there was no such special body of constitutional jurisdiction at the time of the USSR. Constitutional control was carried out by the Parliament *(Verkhovna Rada)* and its presidium. The decision to create a Constitutional Court in the Ukrainian SSR was taken only in 1990. A special law was adopted, but this body was not formed.

The 1996 Constitution of Ukraine provided for the creation of the Constitutional Court and determined its constitutional authorities. In October 1996, the Law on the Constitutional Court of Ukraine was adopted and judges of the Constitutional Court took an oath on 18 October 1996 at the meeting of the Parliament.

2. Position in the hierarchy of courts

The legal status of the Constitutional Court is established by the Constitution (Articles 124 and 147) as the sole body of constitutional jurisdiction, which does not belong to the system of courts of general jurisdiction and which is also independent of the legislative, executive and judicial powers. The specificity of the Constitutional Court's activities lies in the following: it solves not disputes, but questions of the compatibility of laws and other legal acts with the Constitution. It also gives official interpretations of the Constitution and laws of Ukraine. Resolutions of the Constitutional Court are binding (Article 69 of the Law on the Constitutional Court).

I. Basic texts

- The Constitution (Chapter XII Articles 147-153, Articles 85.26, 106.22, 124.3 and 159 and paragraph 6 of Chapter XV "Transitional provisions").

- The Law of Ukraine on the Constitutional Court of Ukraine (adopted on 16 October 1996).

- Regulations confirmed by resolution of the Constitutional Court (5 March 1997).

II. Composition and organisation

1. Composition

The Constitutional Court is composed of eighteen judges (Article 148.1 of the Constitution).

The President of Ukraine, the Parliament and the Congress of Judges each appoint six judges to the Constitutional Court (Article 148.2 of the Constitution).

Any citizen of Ukraine who has reached the age of forty on the day of appointment, has higher legal qualification and professional experience of no less than ten years, has resided in Ukraine for the last twenty years and has a command of the State language, may be a judge of the Constitutional Court (Article 148.3 of the Constitution).

A judge of the Constitutional Court is appointed for nine years without the right of re-appointment (Article 148.4 of the Constitution).

The President of the Constitutional Court and his two Deputy Chairmen are elected by secret ballot for one three-year term from among the judges of the Court.

Guarantees of independence and an unblemished record as well as the incompatibility of judicial office with activities other than those of a scientific, teaching or creative nature extend to judges of the Constitutional Court.

2. Organisation

The Constitutional Court is a permanent court. Three panels are created within the Court, each of them composed of six judges. Each panel has a Secretary, who leads the panel and organises its work. The panels of judges consider questions of admissibility. The President of the Constitutional Court determines the date for consideration of a case by the Constitutional Court.
Procedural decisions of the panels of judges are adopted by a majority of judges who form part of the panel.

Where the panel decides that a case is admissible, the President of the Court submits this case for consideration at a plenary session. Where the panel decides that a case is not admissible, the Secretary of the panel submits the materials to the President of the Court for consideration at the Court session.

The Constitutional Court adopts a final decision.

Consideration of materials by the panels of judges and consideration of cases at the session of the Constitutional Court is conducted in the form of written proceedings.

Consideration of cases at a plenary session of the Court is conducted in the form of oral or written proceedings. The Constitutional Court determines the form of the proceedings.

A quorum for sessions of the Constitutional Court is constituted when no less than 11 judges are present. A resolution is adopted if more than half of the judges who took part in a session voted in favour of the resolution (Article 50 of the Law on the Constitutional Court).

A quorum for plenary sessions of the Court is constituted when no less than 12 judges are present. A resolution is adopted if no less than 10 judges voted in favour of it (Article 51 of the Law on the Constitutional Court).

The President of the Constitutional Court presides over all its sessions and plenary sessions; the Deputy President presides over sessions in the absence of the President.

Proceedings before the Constitutional Court are free of charge. The imposition of state duties is provided for in one case only: when a repeated appeal to court on an issue that has already been considered by the Court is an abuse of the right to appeal.

The Secretariat of the Constitutional Court and its head are responsible for organisational, scholarly, expert, information, reference and other services of the Constitutional Court.

The President and other official members of the Secretariat of the Court are civil servants. The judges of the Constitutional Court are entitled to have a scientific adviser and assistant, who carry out the assignments of the judge.

The Constitutional Court is financed under a separate heading of the State Budget of Ukraine.

III. Powers

1. Jurisdiction

The powers of the Constitutional Court are laid down by Articles 150 and 151 of the Constitution and Article 13 of the Law on the Constitutional Court.

In accordance with these provisions, the Constitutional Court makes decisions and gives conclusions in the following matters:

a. the constitutionality of laws and other legal acts of the Parliament of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and the Parliament of the Autonomous Republic of Crimea;

b. the conformity of the Constitution of Ukraine with valid international agreements, which are brought before the Parliament of Ukraine for ratification;

c. the undertaking of the constitutional procedure of investigation and consideration of the question of the removal of the Ukrainian President from office by means of impeachment;

d. the official interpretation of the Constitution and laws of Ukraine.

Article 159 of the Constitution also provides that the Constitutional Court shall deliver conclusions on the constitutionality of bills on changes to the Constitution of Ukraine.

At the same time, the Law provides that questions of the legality of acts of State bodies, organs of the Autonomous Republic of Crimea and bodies of local self-government are outside the jurisdiction of the Constitutional Court of Ukraine (Article 14 of the Law on the Constitutional Court). The reason for this lies in that fact that the resolution of questions of the legality of the above-mentioned acts falls within the competencies of courts of general jurisdiction, headed by the Supreme Court of Ukraine.

The grounds for the adoption of a decision by the Constitutional Court on the complete or partial unconstitutionality of legal acts are the following:
- incompatibility with the Constitution;
- violation of the procedures laid down by the Constitution for the consideration, approval or entry into force of such acts;
- the exceeding of constitutional powers during the adoption of the act.

2. Procedures

The procedures for constitutional review are governed by the relevant provisions of the Law on the Constitutional Court and the Regulations of the Constitutional Court.

Constitutional claims and constitutional petitions are the forms of appeal that may be made to the Court (Articles 39 and 42 of the Law on the Constitutional Court).

The President of Ukraine, the Parliament of Ukraine, not less than 45 national deputies of Ukraine, the Supreme Court of Ukraine, the Human Rights Representative of the Parliament, the Cabinet of Ministers of Ukraine, the Parliament of the Autonomous Republic of Crimea and bodies of local self-government are entitled to lodge constitutional claims in the cases laid down by law.

Citizens of Ukraine, foreigners, stateless persons and legal persons are entitled to lodge constitutional petitions (Article 43 of the Law on the Constitutional Court).

The Constitutional Court does not consider cases on its own initiative. Constitutional claims and petitions are prepared for consideration by a judge, who undertakes the preliminary preparation of questions for consideration by the panel of judges of the Constitutional Court of Ukraine (Article 19 of the Law on the Constitutional Court).

Article 44 of the Law on the Constitutional Court provides that a constitutional claim or petition can be withdrawn in accordance with a written application from the person or body who submitted the claim or petition to the Court.

Constitutional claims or petitions may be deemed inadmissible if the Constitution or the Law on the Constitutional Court do not grant the right to lodge such a claim or petition, if the claim or petition does not conform with the requirements laid down by the Constitution or the Law on the Constitutional Court, or if the Constitutional Court does not have jurisdiction over the issues raised in the claim or petition.

The time-limit for the consideration of constitutional claims is three months; for constitutional petitions the time-limit is six months.

IV. Nature and effects of decisions

In cases concerning the constitutionality of laws and other legal acts of the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine or the Parliament of the Autonomous Republic of Crimea, the Constitutional Court adopts decisions. The Court can recognise the legal act as unconstitutional in its entirety or in part (Article 61 of the Law on the Constitutional Court).

In addition, the Constitutional Court provides opinions on questions of the official interpretation of the Constitution and laws of Ukraine, the conformity with the Constitution of Ukraine of international treaties that are in force or those international treaties that have been submitted to the Parliament of Ukraine for ratification and the observance of the constitutional procedure of investigation and consideration of the removal of the Ukrainian President from office by the procedure of impeachment (Article 62 of the Law on the Constitutional Court).

Decisions and opinions of the Court must be signed not later than 7 days after their adoption and must be published officially on the first working day after signing.

Laws, other legal acts or individual provisions thereof that are deemed to be unconstitutional cease to have effect from the day the Constitutional Court adopts the decision on their unconstitutionality.

Decisions and opinions of the Constitutional Court are binding. Copies must be sent to the Ministry of Justice on the first working day after the person or body entitled to make a constitutional claim or petition has been officially notified of the decision or opinion. Copies must also be sent to the organ of power which adopted the legal act in question.

In its decision or opinion the Court can define the order and terms of its execution and impose duties to ensure its execution on State organs. Decisions and opinions of the Constitutional Court are published in the "Bulletin of the Constitutional Court of Ukraine" and other official publications.

Comments on the relationship between the Constitutional Court and the executive and legislative branches of State power

The complexity of the relationship between the Constitutional Court and the executive and legislative branches of State power is due largely to the complexity of the legal nature of the Constitutional Court. Though the Constitutional Court is mostly considered to be a body of judicial power (in this sense the Constitutional Court of Ukraine is no exception) its legal nature is determined not only by the features it has in common with courts of ordinary jurisdiction (organisational structure, fundamental principles of activity, guarantees of independence and immunity etc.) but mostly by the differences between them.

First, the Constitutional Court of Ukraine, as is the case with the constitutional courts of other States, is not included in the system of ordinary courts; therefore it is outside any hierarchical structure. Second, the powers of the Constitutional Court, unlike that of ordinary courts, are regulated by the Constitution. In this light the Constitutional Court is equal to such State bodies as the President, parliament and government. Third, the Constitutional Court, being endowed with appropriate authority by the Constitution, undertakes constitutional review as an independent part of State activity.

Moreover, the constitutional review activities of other State bodies such as the Head of State (President), Parliament and government are a derivative from their basic functions whereas for the Constitutional Court this function determines its legal nature. The task of the Constitutional Court thus lies in guaranteeing the supremacy of the Constitution as the fundamental State Law on the whole territory of the State (Articles 147 and 150 of the Constitution, Article 2 of the Law of Ukraine on the Constitutional Court of Ukraine). The decisions of the Constitutional Court are binding on all subjects of law, are final and cannot be the subject of an appeal. They can be overridden only by means of introducing amendments to the Constitution.

Through its decisions the Constitutional Court has the means to exert a significant influence on the activities of the legislative and executive branches of power, and particularly so as regards their legislative and regulatory activity, by means of its deciding on questions of the conformity of laws and other legal acts with the Constitution of Ukraine and the official interpretations it provides of the Constitution and laws of Ukraine.
The above highlights the twofold legal nature of the Constitutional Court. On the one hand it is a judicial body independent of all other bodies of State power and subordinate only to the Constitution; at the same time, the Constitutional Court is one of the highest constitutional State bodies.

One cannot say that this special status of the Constitutional Court is always appreciated in the upper authorities of Ukraine.

The parliament traditionally lays claim to carrying out the constitutional review function. This is demonstrated by its attempt to limit the authority of the Constitutional Court by introducing amendments to the Law on the Constitutional Court and inappropriate action taken in implementing decisions of the Constitutional Court etc. The Constitutional Court of Ukraine, like the Constitutional Courts of other Central and Eastern European States, has certain problems in its relations with the executive authorities, particularly with the government.

Strengthening the independence of the Constitutional Court would make it easier to overcome such problems. Following the constitutional and legislative practice of European States, the

Constitution and the Law on the Constitutional Court of Ukraine secure fundamental guarantees of the Constitutional Court's independence. Moreover, the said Law (Article 31) provides for the financing of the Constitutional Court under a separate heading of the State Budget of Ukraine, one of the most essential guarantees of the Court's independence.

The Constitutional Court deals independently with the financial means assigned in the budget. It carries out its inquiries and selects its staff independently of other State authorities. The Constitutional Court of Ukraine, like the Constitutional Courts of other States, is not accountable to anyone. The independence of the Constitutional Court is also promoted by the procedure for the appointment of the judges of the Constitutional Court (6 from each branch of power), the immunity of judges and certain pecuniary guarantees of office and social maintenance which are provided for by the Constitution.

However, the problem of real guarantees of the independence of the Constitutional Court of Ukraine, as in the Constitutional Courts of other post-totalitarian and post-Soviet societies remains acute. Beside its legal aspects (particularly the necessity of improving the Law on the Constitutional Court) the problem also has significant social aspects arising from previous totalitarian stereotypes of mentality and psychology. It is worth mentioning that the Law on the Constitutional Court, unlike similar laws on Constitutional Courts of other States, does not contain a provision stipulating that the estimate of expenditures of the Constitutional Court cannot be diminished in comparison with the previous financial year. This allows the parliament to alter the budget allowance for the expenditures of the Constitutional Court depending on its attitude to the decisions of the Constitutional Court.

For instance, in 1998 the Court's budget allowance was cut in half by the parliament compared with the amount projected by the government. This is just one example showing the reality of the problem of maintaining the material and financial independence of the Constitutional Court, as with the whole judicial power.

Conclusion

Nevertheless, the Constitutional Court of Ukraine works vigorously towards the realisation of its task of ensuring the supremacy of the Constitution, as the fundamental law on the whole territory.

Ukraine

Identification: UKR-2000-1-008

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 19.04.2000 / **e)** 6-rp/2000 / **f)** Official interpretation of Article 58 of the Constitution and Articles 6 and 81 of the Criminal Code (retroactivity of criminal law) / **g)** / **h)**.

Keywords of the systematic thesaurus:

2.1.1.4.3 **Sources of Constitutional Law** – Categories – Written rules – International instruments – European Convention on Human Rights of 1950.
2.1.1.4.6 **Sources of Constitutional Law** – Categories – Written rules – International instruments – International Covenant on Civil and Political Rights of 1966.
3.9 **General Principles** – Rule of law.
3.12 **General Principles** – Legality.
5.3.36.1 **Fundamental Rights** – Civil and political rights – Non-retrospective effect of law – Criminal law.

Keywords of the alphabetical index:

Retroactivity, laws and other normative acts / Criminal law.

Headnotes:

Only criminal laws which mitigate or annul criminal responsibility can be retroactive.

The Criminal Code (Articles 81.4, 82.4, 83.3, 84.4, 86.2 and 86-1) establishes criminal responsibility for theft of public or collective property on a large or essentially large scale, which is determined with consideration of the minimum wage as established by law effective at the time of discontinuation or termination of the crime. Alteration of the minimum wage does not entail an alternation of the qualification of crimes laid down by the aforementioned articles.

Consequently, the provisions of Article 6.2 of the Criminal Code related to retroactivity do not cover all these cases, and criminal cases should not be revised unless the law stipulates otherwise.

Summary:

The people's deputies submitted a petition to the Constitutional Court for an official interpretation of the provisions of Article 58 of the Constitution and Articles 6 and 81 of the Criminal Code regarding the fact that courts of common jurisdiction erratically ignore application of the principle of non-retroactivity of laws and other normative acts when they mitigate personal criminal responsibility in cases where the minimum wage is altered. This affects qualification of the act of theft of public or collective property on a large or essentially large scale (Articles 81.4, 82.4, 83.3, 84.4, 86.2 and 86-1 of the Criminal Code).

In accordance with Article 58.1 of the Constitution, laws and other normative and legal acts are not retroactive. The principle of the inadmissibility of the retroactivity of laws and other normative acts established by the Constitution is compliant with international legal acts, in particular, with Article 15 of the International Covenant on Civil and Political Rights and Article 7 ECHR.

The essence of the retroactivity of laws and other normative acts lies in the fact that their provisions apply to legal relations which existed prior to the coming into force of the above laws. However, their enforcement is impossible in some areas of law, especially criminal law.

In accordance with Article 58.2 of the Constitution, no one can be held criminally responsible for deeds which at the time they were committed did not constitute an offence. According to this constitutional provision, an action can only be made an offence by law and not by any other kind of normative act. This

conclusion is supported by the provisions of Article 92.22 of the Constitution stipulating that only laws determine “the basis of civil legal responsibility; deeds which are criminal, administrative or disciplinary offences and responsibility for committing them.”

The principle of the supremacy of law is acknowledged and in force in Ukraine. The Constitution has supreme legal force. Laws and other normative acts are adopted in accordance with the Constitution and must be compliant with it (Article 8 of the Constitution).

In accordance with the provisions of Article 6.1 of the Penal Code, criminality and providing adequate punishment for an offence are determined by the law in force at the time the offence was committed. Part two of the aforementioned article stipulates that a law which eliminates reasons for punishment or softens the punishment shall be retroactive. These provisions of the Code correspond to the provisions of Article 58 of the Constitution. Retroactivity of criminal law means applying the law to persons who carried out acts prior to the validity of the law. Comparing the provisions of Articles 8, 58, 92 of the Constitution and of Article 152.1 of Section XV “Transitional Provisions” of the Constitution with Article 6 of the Code leads to the conclusion that only the criminal laws determine deeds as crimes and establish responsibility for their commitment. Retroactivity is provided for by criminal laws in cases when they cancel or soften responsibility of a person.

An enactment of the Parliament on procedures to put into effect and enforce the Law on the introduction of amendments to the Criminal Code, the Criminal Procedure Code of the Ukrainian Soviet Socialist Republic and the Administrative Offence Code of the Ukrainian Soviet Socialist Republic dated 7 July 1992 no. 2548-XII established that the punishment for theft must be established with consideration of the value of the *corpus delicti* on the basis of the amount of the minimum wage prescribed by law in force at the time of discontinuation or termination of the crime (paragraph 4).

Therefore, lawmakers determined that altering the amount of the minimum wage does not affect the qualification of crimes committed prior to altering the minimal wage by appropriate laws.

The Constitution established that deeds which are considered crimes and responsibility for committing them are determined only by laws (Article 22.92.1 of the Constitution) rather than by sub-legal acts.

Criminal law may contain references to provisions of other normative legal acts. Unless these provisions are changed in future, the general content of a criminal law will not be changed. The opposite interpretation would mean that criminal law could be altered by sub-legal acts, in particular resolutions of the Parliament, decrees of the President and acts of the Cabinet of Ministers, which would conflict with the requirements of Article 92.22 of the Constitution.

Articles 81.4, 82.4, 83.3, 84.4, 86.2 and 86-1 of the Criminal Code, which, in accordance with paragraphs two and three of the note to Article 81 of the Code, determine that the criteria of large scale or essentially large scale theft of public and collective property are blanket, and the above mentioned peculiarities of correlation of common and specific contents of a blanket provision do not apply to them.

Altering the minimum wage by appropriate normative and legal acts does not entail changes in the provisions, the contents of which are specified with application of such amount. This law, in this instance Articles 81.4, 82.4, 83.3, 84.4, 86.2 and 86-1 of the Criminal Code, cannot be deemed new, and the provisions of Article 58.1 of the Constitution and Article 6.2 of the Code are inapplicable to this law.

Languages:

Ukrainian.

Identification: UKR-2000-1-007

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 18.04.2000 / **e)** 5-rp/2000 / **f)** Constitutionality of Article 5.2 of the Law on authorised human rights representative of the Parliament (age requirement) / **g)** / **h)**.

Keywords of the systematic thesaurus:

4.12.1 **Institutions** – Ombudsman – Appointment.
5.2.1.2 **Fundamental Rights** – Equality – Scope of application – Employment.
5.2.2.7 **Fundamental Rights** – Equality – Criteria of distinction – Age.

Keywords of the alphabetical index:

Qualification requirements.

Headnotes:

The requirements of the law which states that the authorised human rights representative of the Parliament *(Verkhovna Rada)* may be appointed from among citizens of Ukraine, who, on the day of election, attained the age of 40 cannot be deemed to restrict the right of citizens to enjoy equal access to the public service and service in local bodies of self-government (Article 38.2 of the Constitution).

Summary:

The people's deputies claimed that the establishment of the age requirement for candidates for the position of the authorised person of the Parliament *(Verkhovna Rada)* in matters of human rights contradicts certain provisions of the Constitution, since Article 101 of the Constitution does not stipulate any age limitation for citizens to fill the vacant position of the authorised person of the Parliament in matters of human rights.

The Constitution does not contain the term "requirement"; instead it fixes certain qualification requirements for candidates to some public service positions. This applies to candidates for people's deputies, professional judges and judges of the Constitutional Court. The Constitution lays down certain qualification requirements for presidential contenders. Often qualification requirements for certain categories of state servants are established by appropriate laws, in particular for candidates to the positions of judge of the Constitutional Court, judge of the Higher Arbitration Court, members of the Higher Council of Justice and members of the Central Election Committee. Qualification requirements are dictated by the nature and type of activities of the aforementioned officials and, therefore, cannot be deemed to restrict the right of citizens to enjoy equal access to the public service.

The institution by the Constitution and laws of certain qualification requirements does not violate the constitutional principle of equality since all citizens who comply with specific qualification requirements are eligible to occupy the aforementioned positions.

Bearing in mind the special importance of the activities of the authorised person of the Parliament in matters of human rights, the essence of which lies in exercising parliamentary control over the observance of constitutional rights and liberties, the Parliament has the power to establish qualification requirements for a candidate for this position. The Constitution does not prohibit this. Among such qualification requirements, there are, in particular, experience and social maturity which can only be acquired after attaining a certain age.

Languages:

Ukrainian.

Identification: UKR-2000-1-006

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 11.04.2000 / **e)** 4-rp/2000 / **f)** Official interpretation of Article 86 of the Constitution and Articles 12 and 19 of the Law on the status of people's deputy (requests of people's deputies to the prosecutor's office) / **g)** / **h)**.

Keywords of the systematic thesaurus:

4.5.2 **Institutions** – Legislative bodies – Powers.
4.5.9 **Institutions** – Legislative bodies – Relations with the courts.

4.7.4.3 **Institutions** – Courts and tribunals – Organisation – Prosecutors / State counsel.

Keywords of the alphabetical index:

Deputy activity / Prosecutor's office, requests.

Headnotes:

A people's deputy is not allowed to petition agencies of the Office of Public Prosecutor with demands, proposals or instructions in specific cases.

Where agencies of the Office of Public Prosecutor receive proposals, instructions or demands from people's deputies on specific cases, prosecutors and investigators must observe the law.

Summary:

The Office of Public Prosecutor lodged a claim to the Constitutional Court for an official interpretation of the provisions of Article 86 of the Constitution and Articles 12 and 19 of the Law on the status of people's deputy concerning the right of a people's deputy "to apply to the Office of Public Prosecutor with requests and addresses which contain demands and instructions regarding specific criminal, civil and arbitration proceedings".

Bodies to which a people's deputy may apply with a request are the bodies of the Parliament *(Verkhovna Rada)* and the Cabinet of Ministers. Moreover, requests made by people's deputies at sittings of the Parliament may be addressed to executives of other bodies of state power and bodies of local self-government as well as to senior managers of enterprises, institutions and organisations located on the territory of Ukraine regardless of their form of ownership.

According to Article 86.1 of the Constitution, a people's deputy must address his/her demands and proposals only to the heads of agencies of the Office of Public Prosecutor, not to other employees, including investigators.

People's deputies may not address heads of agencies of the Office of Public Prosecutor with requests which are contrary the requirements of law.

Heads of agencies of the Office of Public Prosecutor are only required to notify the people's deputy of the results of consideration of his/her request.

Agencies of state power and local self-government, their officials, the media, social and political organisations (movements) and their representatives must not interfere with the activities of the Office of Public Prosecutor.

The Constitution does not directly provide for control over the activities of the Office of Public Prosecutor; neither is there a possibility to obtain additional powers of control by passing an appropriate law.

Proposals, instructions and requests of a people's deputy must comply with the Constitution and laws and may concern only the issues concerning deputy activities.

The issue of state prosecution support in court, the representation of the interests of an individual or the state in court in cases stipulated by law, the supervision of observance of laws by agencies during an investigation, the supervision of the legality of the execution of court rulings in criminal cases, the enforcement of actions restricting personal freedom as well as requests to investigators of the Office of Public Prosecutor regarding the pre-trial investigation of specific criminal cases cannot be deemed as connected with a deputy's activities.

Prosecutors and investigators of the Office of Public Prosecutor while carrying out judicial actions are independent from any agencies and other officials whatsoever, and obey only the law. Any influence on a prosecutor or investigator with the intention of hindering the carrying out of his/her duties is prohibited by the law.

Languages:

Ukrainian.

Identification: UKR-2000-1-005

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 27.03.2000 / **e)** 3-rp/2000 / **f)** Constitutionality of the Law on proclamation of an all-Ukrainian referendum on people's initiative / **g)** / **h)**.

Keywords of the systematic thesaurus:

1.3.4.6 **Constitutional Justice** – Jurisdiction – Types of litigation – Admissibility of referenda and other consultations.
1.3.5.6 **Constitutional Justice** – Jurisdiction – The subject of review – Presidential decrees.
3.1 **General Principles** – Sovereignty.
3.3.1 **General Principles** – Democracy – Representative democracy.
3.3.2 **General Principles** – Democracy – Direct democracy.
4.5.7 **Institutions** – Legislative bodies – Relations with the Head of State.
4.9.1 **Institutions** – Elections and instruments of direct democracy – Instruments of direct democracy.
4.9.6 **Institutions** – Elections and instruments of direct democracy – Preliminary procedures.

Keywords of the alphabetical index:

All-Ukrainian referendum / People's initiative.

Headnotes:

The expression of a no-confidence vote in the Parliament *(Verkhovna Rada)* and the adoption of a new Constitution are unconstitutional by way of an all-Ukrainian referendum.

Where any other issues set forth in the Decree are approved by an all-Ukrainian referendum on the people's initiative, they shall be mandatory for consideration by the appropriate bodies of state power in accordance with the procedures prescribed by the Constitution and laws.

Summary:

The people's deputies lodged a claim to the Constitutional Court to examine the constitutionality of the Decree of the President proclaming an all-Ukrainian referendum at the people's initiative. They emphasised that the Decree differs from what is provided in Article 13 of the Law on all-Ukrainian and local referendums. The institution of an all-Ukrainian referendum at the request of citizens is an essentially new type of referendum. Its organisation and the procedures for its conduct are not regulated by the aforementioned Law, and this disables the holding of such a referendum. The all-Ukrainian referendum at the people's initiative cannot directly introduce changes to the Constitution since the Constitution does not provide for consultative referendums. Issues which in accordance with the Decree are to be included in bulletins do not comply with requirements for the holding of referendums since some of them cover two or more independent issues, and this may affect the free expression of the will of citizens by voting.

The all-Ukrainian referendum is one of the forms of expression of the people's will (Article 69 of the Constitution), which may be called by the Parliament or the President according to their powers established by the Constitution. In particular, the Parliament *(Verkhovna Rada)* calls an all-Ukrainian referendum on issues regarding the territory of Ukraine (Articles 73 and 85.2 of the Constitution). The President calls an all-Ukrainian referendum on changing the Constitution in accordance with Article 156 of the Constitution. A referendum shall not be permitted regarding draft laws on issues of taxes, the budget and amnesty (Article 74 of the Constitution).

The Constitution also provides that an all-Ukrainian referendum may be held at the people's initiative, proclaimed by the President, at the request of at least three million Ukrainian citizens who are eligible to vote and provided that signatures in support of the referendum have been collected in at least two thirds

of oblasts (regions) and that there are at least one hundred signatures per oblast (Article 72.2 of the Constitution). At the same time, the Constitution does not provide for a no-confidence vote in an all-Ukrainian referendum, including that proclaimed at the people's initiative, in the Parliament or any other constitutional governmental bodies as a possible reason for early termination of their authorities. This is why the issue of a no-confidence vote in the Parliament would be a violation of the constitutional principle whereby bodies of state power exercise their authorities according to the Constitution and the principles of a state ruled by law.

In accordance with the Constitution, the bearer of sovereignty and the only source of power in Ukraine is the people. People exercise power directly and through the bodies of state power and local self-government. The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and may not be usurped by the state, its bodies or its officials (Article 5 of the Constitution).

The issue of the adoption of a new Constitution is put to an all-Ukrainian referendum without obtaining the people's will on the necessity to adopt a new Constitution. It brings into doubt the very existence of the current Constitution, which may lead to weakening the fundamental principles of the constitutional order and the rights and liberties of people and citizens.

Confirming the exclusive right of the people to determine and change the constitutional order, the Constitution has established a clear procedure for introducing changes to the Constitution. Changes to the Constitution are the competence of the Parliament and this competence is exercised within the limits and in accordance with the procedures prescribed by Section XIII of the Constitution. The Constitution, while introducing changes to it, balances the actions of the President, the people's deputies and the Parliament for the realisation of the people's will.

Languages:

Ukrainian.

Identification: UKR-2000-1-004

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 10.02.2000 / **e)** 2-rp/2000 / **f)** Constitutionality of the Law on prices and pricing (prices and tariffs for housing and municipal and other services / **g)** / **h)**.

Keywords of the systematic thesaurus:

3.4 **General Principles** – Separation of powers.
4.5.2 **Institutions** – Legislative bodies – Powers.
4.5.8 **Institutions** – Legislative bodies – Relations with the executive bodies.
4.6.2 **Institutions** – Executive bodies – Powers.
4.6.7 **Institutions** – Executive bodies – Relations with the legislative bodies.
4.6.9.1.1 **Institutions** – Executive bodies – Territorial administrative decentralisation – Principles – Local self-government.
4.8.5.2.1 **Institutions** – Federalism and regionalism – Distribution of powers – Implementation – Distribution *ratione materiae*.
4.10.1 **Institutions** – Public finances – Principles.

Keywords of the alphabetical index:

Pricing policy, fundamental principles.

Headnotes:

While the definition of the principles of pricing policy is a prerogative of Parliament *(Verkhovna Rada)* the executive branch of powers implements these principles in practice.

Having performed a direct regulation of prices and tariffs, the Parliament interfered with the powers of the relevant bodies of the executive power including the Autonomous Republic of Crimea and bodies of local self-government, thus violating the principle of the separation of state powers and Articles 6, 19, 116, 137 and 143 of the Constitution.

Summary:

The following provisions of the Law on prices and pricing dated 3 December 1990 as amended by the Law introducing changes to the Law on prices and pricing dated 17 March 1999 were found unconstitutional:

- in case of arrears regarding wages, stipends, pensions and other social payments, any rise in prices and tariffs for housing, municipal services and public transport shall be prohibited (Article 5.2);

- prices and tariffs for housing and municipal services (inclusive of power and natural gas supply for housing and municipal needs), public transport and communications shall be established by the Cabinet of Ministers in co-ordination with the Parliament (Article 9.3).

Payment for housing, municipal services and public transport shall be made by citizens at the prices and tariffs established by the Cabinet of Ministers, the National Commission on Regulation of Electrical Energy, and other central and local bodies of executive power on 1 June 1998 (Section II.2 of "Final Provisions" of the Law introducing changes to the Law on prices and pricing dated 17 March 1999).

The case was initiated by the President who asked the Constitutional Court to examine the constitutionality of the Law introducing of changes to the Law on prices and pricing dated 17 March 1999. The President believed that by passing this Law, the Parliament *(Verkhovna Rada)* went beyond its powers determined by the Constitution (Articles 85 and 92 of the Constitution) and assumed authorities, which in accordance with the Constitution are assigned to bodies of the executive power and bodies of local self-government. By doing so, the Parliament violated the principle of the separation of powers (Article 6.1 of the Constitution).

The principle of the separation of state powers (Article 6 of the Constitution) means that bodies of the legislative, executive and judicial powers exercise their authorities only on the grounds and in accordance with the Constitution and laws. Bodies of local self-government are bound to act in accordance with, within the framework of and in the manner prescribed by the Constitution and laws (Article 19.2 of the Constitution).

The Parliament in accordance with Article 85.5 of the Constitution determines the fundamental principles of domestic and foreign policy including pricing as a component of internal economic and social policies of the state. While the Cabinet of Ministers implements pricing policy in practice (Article 116.3 of the Constitution) the principles of establishing and enforcing prices and tariffs are defined by Parliament.

The main objective of the principles of pricing policy is directing and ensuring a balance of the entire mechanism of pricing and integrity in the regulating process in this area.

The co-ordination of prices and tariffs by the Cabinet of Ministers with the Parliament as required by Article 9.3 of the Law on prices and pricing is not one of the Parliament's powers of control prescribed by the Constitution. The Parliament having overstepped its powers by obliging the Cabinet of Ministers to seek its consent in the establishing of prices.

Languages:

Ukrainian.

Identification: UKR-2000-1-003

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 29.12.1999 / **e)** 11-rp/99 / **f)** Constitutionality of Articles 24, 58, 59, 60, 93, 190-1 of the Criminal Code (capital punishment) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), no. 4/2000 / **h)**.

Keywords of the systematic thesaurus:

2.1.1.4.3 **Sources of Constitutional Law** – Categories – Written rules – International instruments – European Convention on Human Rights of 1950.
3.9 **General Principles** – Rule of law.
3.12 **General Principles** – Legality.
3.21 **General Principles** – Prohibition of arbitrariness.
5.1.3 **Fundamental Rights** – General questions – Limits and restrictions.
5.3.1 **Fundamental Rights** – Civil and political rights – Right to dignity.
5.3.2 **Fundamental Rights** – Civil and political rights – Right to life.
5.3.3 **Fundamental Rights** – Civil and political rights – Prohibition of torture and inhuman and degrading treatment.

Keywords of the alphabetical index:

Capital punishment, abolition / Punishment, purpose / Judicial error / .

Headnotes:

The inalienable right to life is an integral part of a person's right to human dignity. As fundamental rights of the person, they predetermine the possibility of realising other rights and liberties and may be neither restricted nor abolished. Provisions of articles of the Criminal Code which provide for capital punishment as a type of punishment are unconstitutional.

Summary:

The people's deputies applied to the Constitutional Court regarding the constitutionality of the provisions of Article 24 of the Criminal Code on capital punishment as an exceptional sanction applied in cases of serious offences which are stipulated in the Special Part of the Code. The people's deputies maintained that the right to life provided by the Constitution is absolute, and, while interpreting the Constitution, a profound and clearly outlined respect for the value of human life as one of the fundamental principles of building a democratic society ruled by law should be taken into consideration. Therefore, in the context of the Constitution, imposing the death penalty as an exceptional sanction should be regarded as an "arbitrary deprivation of a human being's right to life".

The Constitution defines a human being, its life and health, honour and dignity, immunity and safety as the supreme social value (Article 3.1 of the Constitution), and provides that the establishment and protection of human rights and liberties is the main duty of the state (Article 3.2 of the Constitution).

The key constitutional provision recognising the right to life is the provision stipulating that this right is an integral (Article 27.2 of the Constitution), inalienable and inviolable (Article 21 of the Constitution) right. The right to life belongs to human beings from birth and is protected by the state.

The Constitution declares that constitutional rights and liberties, in particular the right to life, are guaranteed and may not be abolished (Article 22.2 of the Constitution). It also states that it is prohibited to introduce any changes or alterations which abolish the rights and liberties of human beings and citizens (Article 157.1 of the Constitution). It is prohibited to narrow the scope and content of existing rights and liberties when new laws are passed or changes are introduced to existing laws (Article 22.3 of the Constitution).

The provisions of Article 22.2 of the Constitution place a duty upon the state to guarantee constitutional rights and liberties, the right to life in the first place, and the duty to refrain from adopting any acts which may lead to the abolition of constitutional rights and liberties, including the right to life. Depriving a human being of life by the state through execution as a sanction even within the provisions stipulated by law is regarded as abolishing the integral right to life and is thus contrary to the Constitution.

Each person has the right to freely develop his or her personality as long as this does not violate the rights and liberties of others. The Constitution attributes an integral right to life to each human being (Article 27.1 of the Constitution) and guarantees protection of this right from abolition. At the same time, it establishes the provision that each person has the right to defend his/her life and health, and the lives and health of other people, from illegal encroachments (Article 27.3 of the Constitution). The Criminal Code has established provisions related to the acts of a person in a situation of necessary self-defence in

order to protect his/her life and health or the lives and health of other persons if dictated by urgent necessity to prevent or terminate socially dangerous encroachments.

Constitutional support for an integral right to life as well as for other rights and liberties is based on the following fundamental principle: all exceptions related to rights and liberties of human beings and citizens shall be established by the Constitution rather than by laws or other normative acts. In accordance with Article 64.1 of the Constitution, "constitutional rights and liberties of human beings and citizens may not be restricted except in the cases provided for in the Constitution".

The Constitution does not contain any provision whatsoever stating that the death penalty is an exception to the provisions of the Constitution on an integral right to life.

The inconsistency of the death penalty with the purposes of punishment as well as the possibility of judicial error should also be considered. This does not comply with constitutional guarantees of protection of human rights and liberties (Article 58 of the Constitution).

The death penalty also contradicts Article 28 of the Constitution which states that "nobody may be exposed to torture, cruel, inhuman or degrading treatment or punishment", which reflects Article 3 ECHR.

Languages:

Ukrainian.

Identification: UKR-2000-1-002

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 16.12.1999 / **e)** 10-rp/99 / **f)** Official interpretation of Article 10 of the Constitution / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), no. 4/2000 / **h)**.

Keywords of the systematic thesaurus:

2.3.8 **Sources of Constitutional Law** – Techniques of review – Systematic interpretation.
3.1 **General Principles** – Sovereignty.
4.2 **Institutions** – State Symbols.
4.3.1 **Institutions** – Languages – Official language(s).
4.5.2 **Institutions** – Legislative bodies – Powers.
4.8.3 **Institutions** – Federalism and regionalism – Institutional aspects.
5.2.2.10 **Fundamental Rights** – Equality – Criteria of distinction – Language.
5.3.38 **Fundamental Rights** – Civil and political rights – Linguistic freedom.

Keywords of the alphabetical index:

Official language / Language of education, minorities.

Headnotes:

As the official language, Ukrainian is the compulsory language of communication on the entire territory of Ukraine for state bodies and bodies of local self-government while exercising their powers (the language of acts, work, office work, documentation etc.) as well as in other public areas of life as prescribed by law (Article 10.5 of the Constitution). Along with the official language, local bodies of executive power, bodies of the Autonomous Republic of Crimea and bodies of local self-government while exercising their powers can use the Russian language and other languages of national minorities within the limits and in accordance with procedures prescribed by law.

The language of education in pre-school, general secondary, vocational and higher educational state and communal institutions of Ukraine is Ukrainian. Along with the official language, the languages of national minorities may be used and studied in state and communal educational institutions in accordance with the provisions of Article 53.5 of the Constitution.

Summary:

The people's deputies raised the issue of the formal interpretation of the provisions of Article 10 of the Constitution relating to the compulsory nature of use of the official language by bodies of state power and their officials as well as use of the Ukrainian language in state educational institutions.

The term "state language" shall denote the language which the state designates as the compulsory means of communication in public spheres of the life of the society.

Article 10.1 of the Constitution has designated Ukrainian as the official language. This fully complies with the state-forming role of the Ukrainian nation, as per the preamble to the Constitution, which has historically populated the territory of Ukraine, made up the absolute majority of Ukraine's population and given the name to the state.

The concept of the official language is a component of "the constitutional order", which is larger by scope and content. Another component, in particular, is the concept of national symbols. The right to determine and change the constitutional order in Ukraine belongs to the people (Article 5.3 of the Constitution).

Public areas, where the official language is used, are in the first place the areas where powers are exercised by agencies and bodies of the legislative, executive and judicial authorities, other bodies of state power and bodies of local self-government (language of work, acts, office work and documents, relationship among these bodies and agencies etc.). Other areas, which in accordance with part five of Article 10 and Article 92.1.4 of the Constitution are determined by laws, can also be related to the areas of use of the official language.

The issue of the use of the Ukrainian language and other languages in state educational institutions is also laid down by law.

Procedures for the use of languages in accordance with Article 4.92.1 of the Constitution are to be determined exceptionally by law.

Good knowledge of the Ukrainian language is one of the mandatory conditions of filling appropriate positions (Articles 103, 127 and 148 of the Constitution).

Use of Ukrainian as the official language is binding by constitutional law.

In accordance with Article 10.3 of the Constitution, free development, use and protection of the Russian language and other languages of national minorities of Ukraine shall be guaranteed. The inadmissibility of granting privileges or imposing restrictions on the basis of language is provided by Article 24.2 of the Constitution.

Languages:

Ukrainian.

Identification: UKR-2000-1-001

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 27.10.1999 / **e)** 9-rp/99 / **f)** Official interpretation of Article 80.3 of the Constitution (parliamentary immunity) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), no. 44/99 / **h)**.

Keywords of the systematic thesaurus:

3.12 **General Principles** – Legality.
3.13 **General Principles** – *Nullum crimen, nulla poena sine lege*.
3.20 **General Principles** – Equality.
4.5.12 **Institutions** – Legislative bodies – Status of members of legislative bodies.
5.3.5 **Fundamental Rights** – Civil and political rights – Individual liberty.

Keywords of the alphabetical index:

Parliamentary immunity / Criminal responsibility.

Headnotes:

Criminal responsibility starts from the moment of conviction. The process of bringing someone to criminal responsibility as a phase of criminal prosecution commences when a person is charged with a criminal offence. The consent of the Parliament *(Verkhovna Rada)* has to be obtained prior to charging a deputy with a crime in accordance with the Code of Criminal Procedure. Parliamentary immunity covers the people's deputy from the time of his/her formal election subject to confirmation by the appropriate election committee until the termination of his/her mandate. Where a person is charged a criminal offence and/or is arrested prior to his/her formal election as a people's deputy, criminal proceedings can be continued subject to the consent of the Parliament regarding prosecution and/or detention.

Summary:

The Ministry of Internal Affairs requested an official interpretation of Article 80.3 of the Constitution. Article 80.3 stipulates that people's deputies cannot be brought to criminal responsibility, detained or arrested without the consent of the Parliament. The constitutional request also raised the following issues: the moment when criminal responsibility and bringing a person to criminal responsibility begins; the need to cancel such preventive measures as detention prior to a person's election as a people's deputy; and the need to apply to the Parliament for its consent when bringing a person to criminal responsibility and carrying out his/her arrest as prescribed by law.

Criminal responsibility is a type of legal liability and a special element of the mechanism of state legal regulation of persons accused of a criminal offence. The concept of criminal responsibility has not been legally determined, and, therefore, is interpreted differently in the theory of criminal law and the law of criminal procedure.

In accordance with Article 62.1 of the Constitution a person is presumed innocent until his/her guilt has been proved through legal procedure and established by a court verdict. In accordance with Article 3 of the Criminal Code, criminal responsibility applies only to a person who is guilty of committing a crime, i.e. a person who intentionally or negligently committed a socially dangerous act. No person can be found guilty of a criminal offence and punished other than on the basis of a court sentence and according to law. These provisions give reasons to consider criminal responsibility as a specific legal institution, within the framework of which the state responds to a committed crime.

The mere fact of instituting criminal proceedings against an individual, of arresting or detaining them or putting them on trial cannot be defined as criminal responsibility. A person is only criminally responsible pursuant to a reasoned court decision.

The status of people's deputy is determined by the Constitution and laws. An important constitutional guarantee is parliamentary immunity, which has the purpose of ensuring that the people's deputy carries out his/her functions efficiently and without any hindrance. The immunity is not a privilege; rather, it has a public and legal nature.

In accordance with the provisions of Article 80.2 of the Constitution, people's deputies are not legally responsible for the results of voting or for statements in Parliament and its agencies except for an slander. This means that a people's deputy cannot be held legally responsible for the aforementioned acts even upon termination of his/her mandate.

Parliamentary immunity also provides specific procedures for bringing to criminal responsibility or arresting people's deputies. They may not be brought to criminal responsibility or arrested without the consent of the Parliament (Article 80.3 of the Constitution).

Parliamentary immunity covers people's deputies from the time of their formal election in accordance with the election results certified by the appropriate election committee through to termination of their mandate in accordance with procedures prescribed by law. If a person was elected a people's deputy after having been accused of a criminal offence or arrested in connection with a criminal offence, further criminal proceedings against such deputy may continue if the Parliament gives its consent. This approach ensures the principle of equality of all people's deputies in the context of parliamentary immunity.

Languages:

Ukrainian.

Identification: UKR-1999-2-006

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 06/07/1999 / **e)** 1-25/99 / **f)** Case concerning the official interpretation of Articles 38 and 78 of the Constitution of Ukraine and Articles 1, 10, 12 and 49.2 of the Ukrainian Law on local self-government in Ukraine (case on plurality of posts as National Deputy of Ukraine and mayor) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N 27 /99 / **h)** .

Keywords of the Systematic Thesaurus:

4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.
4.6.9.2 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure.
5.2.34.2 **Fundamental Rights** - Civil and political rights - Electoral rights - Right to be elected.

Keywords of the alphabetical index:

Mayor / Public office, plurality, incompatibility / Electoral mandate, plurality, incompatibility / Municipal Council.

Headnotes:

The mayor of a municipality (village, town etc) is a senior public officer with an electoral mandate to represent the corresponding territorial community.

The citizens of Ukraine have the right to be elected to any public authority organ, in particular the *Verkhovna Rada* (parliament) of Ukraine, and local self-government organs - municipal, district or regional councils - and to be elected as mayor; but citizens may only hold an electoral mandate in one of these bodies or in the post of municipal mayor.

Summary:

The applicants note that citizens have the right to freely elect and be elected to bodies of state power and bodies of local self-government (Article 38.1 of the Constitution). Accordingly, the constitutional rights and freedoms of citizens are guaranteed and cannot be abolished (Article 22.2 of the Constitution), neither can they be restricted except in cases envisaged by the Constitution itself (Article 64.1 of the Constitution). The applicants maintain that citizens have the right to be elected at the same time to bodies of the public authorities (in the instant case, the *Verkhovna Rada* of Ukraine) and to bodies of local self-government.

The bodies of local self-government, to which elections are also held on the basis of universal, equal and direct suffrage by secret ballot (Articles 71 and 141.1 of the Constitution) are the municipal councils. On the same basis, local communities elect for a four-year term the mayor who leads the executive body of the council and presides at its meetings (Article 141.2 of the Constitution).

The status and prerogatives of municipal council chairmen and deputies and the arrangements for establishing, reorganising or abolishing the councils are determined by the Law and the provisions of the Constitution (Articles 78 and 141.3 of the Constitution).

The Constitutional Court held that it was in practice unnecessary to give an official interpretation of the provisions of Article 1 of the Law on local self-government in Ukraine, since this article itself defines the following terms used in the Law: "representative organ of the local self-governing body", "district and regional councils", "local self-government official" etc. Moreover, these terms are consistent with the Constitution (Articles 7, 140, 141, 142, 143, 144, 145 and 146 of the Constitution).

The Constitutional Court reached the conclusion that the term "electoral mandate" is necessarily related to the election of a person to a particular post, with the status of National Deputy of Ukraine or deputy of the *Verkhovna Rada* of the autonomous republic of Crimea, municipal deputy, municipal district deputy, member of the district or regional council and with the appropriate powers.

In accordance with the Constitution, the following exercise an electoral mandate: the national deputies of Ukraine (Article 78.2 of the Constitution), the President of Ukraine (Article 103.4 of the Constitution), the deputies of the *Verkhovna Rada* of the autonomous republic of Crimea, and the municipal, district and regional deputies, as directly determined by the representative character of these bodies (Articles 136, 140 and 141 of the Constitution). A mayor is the principal public official of a local community (town or village) with an electoral mandate (Article 12.1 of the Law on local self-government in Ukraine). The electoral mandate of the mayor is determined above all by his or her direct election by the local population concerned.

In exercising his electoral mandate, the mayor acts in the name of the electorate. In particular, he represents the local community, the municipal council and its executive committee in relations with the public authorities, other organs of local self-government, groups of citizens etc; he refers matters to the court for the purpose of reviewing the lawfulness of the acts of the appropriate bodies of local self-government, local bodies of the executive authorities, industrial and commercial undertakings, and other institutions and organisations where such acts may restrict the rights or harm the interests of the local community, or infringe the powers of the council and its subordinate bodies; on behalf of the local community, the municipal council and its executive committee, the mayor enters into contracts in accordance with legislation (Article 42.3 of the Ukraine Law on local self-government). These powers are exercised by virtue of the mandate and responsibilities assigned to the mayor by the electorate.

The mayor is the principal public officer of the local community which he has the duty to represent and it is for this reason that he cannot exercise any other electoral mandate, especially as in this case the office of National Deputy of Ukraine (Article 78.2 of the Constitution).

Supplementary information:

Legal norms to which the Court referred:

- Articles 7, 22, 38, 64, 71, 78, 103, 136 and 140-46 of the Constitution;

- Articles 1, 10, 12, 42 and 49.2 of the Law on local self-government in Ukraine.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-2-005

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 24/06/1999 / **e)** 1-31/99 / **f)** Case concerning the official interpretation of the provisions of Article 22.6 of the Ukrainian Law on the militia and Article 22.7 of the Ukrainian Law on the fire-fighting service (case on rights to benefits) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N27/99 / **h)** .

Keywords of the Systematic Thesaurus:

2.3.5 **Sources of Constitutional Law** - Techniques of interpretation - Logical interpretation.
3.5 **General Principles** - Social State.
3.9 **General Principles** - Rule of law.
4.10 **Institutions** - Armed forces, police forces and secret services.
5.1.2.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons.
5.3.12 **Fundamental Rights** - Economic, social and cultural rights - Right to social security.
5.3.14 **Fundamental Rights** - Economic, social and cultural rights - Right to a sufficient standard of living.

Keywords of the alphabetical index:

Benefit, right / Pensioners / *Lex generalis* / *Lex specialis*.

Headnotes:

The special provisions of the Laws which provide for benefits with respect to payment of housing, with associated expenses and fuel, for members of the militia and their families do not exceed the limits of the general standards concerning the rights to benefits enjoyed by militia members having retired owing to age, illness or seniority. For members of the fire-fighting service having retired for reasons of age, illness or seniority, and the members of their families, there is a guaranteed right to a 50% reduction for the payment of housing, associated expenses and fuel.

Summary:

In order to interpret the disputed provisions (see title of decision), it is necessary to determine the constitutional principles applicable: the declaration of Ukraine as a social state (Article 1 of the Constitution); the principle according to which the human being is the highest social value (Article 3 of the Constitution); the principle of the rule of Law (Article 8 of the Constitution); the exceptional role of law enforcement bodies and military formations in guaranteeing state security and protecting state borders (Article 17 of the Constitution); the equality of all people in their dignity and the right to respect of human dignity (Articles 21 and 28 of the Constitution); the right of citizens to social protection and a standard of living not lower than the minimum living standard established by Law (Article 46 of the Constitution) and the right to security. In addition to these rights, there are other provisions providing for benefits for members of the militia or the fire-fighting services.

There is no legislation in Ukraine governing the status of veterans of the Interior Ministry, and the norms of national legislation under consideration are the sole legal means for establishing the social protection of retired members of the militia and the fire-fighting services. The standard-setting character of the disputed Laws testifies to the fact that they can be applied exclusively on condition that the other norms of these Laws are also applied, since the general standard is materialised by the special standard. Consequently, the provisions to be interpreted that relate to retired members of the militia and fire-fighting services are pertinent and the norms of other articles of the two Laws which provide for certain advantages for the former are of derived and complementary nature. Nevertheless, the relevant norms do not contain the details of the applicable legal rules but define the framework for applying the appropriate provisions.

The special or exceptional norms in the two Laws, with their specific content defining the right to benefits for a clearly circumscribed group of particular persons, also represent special norms by virtue of their role in the system of legal rules. In the application of the Law, norms expressed in concrete terms are applied to extend or restrict the scope of the general norms, which in turn continue to determine the application of special or exclusive norms. Hence, the provisions of the Law on the militia and the Law on the fire-fighting services, as laws of general application, include special or inclusive norms which define exhaustively the group of persons entitled to the benefits provided for under these Laws.

Supplementary information:

Legal norms to which the Court referred:

- Articles 1, 3, 8, 17, 21, 28 and 46 of the Constitution;
- Provisions of Article 22.6 of the Ukrainian Law on the militia;
- Provisions of Article 22.7 of the Ukrainian Law on the fire-fighting service.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-2-004

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 24/06/1999 / **e)** 1-31/99 / **f)** Case concerning the conformity of Articles 19 and 42 of the Ukrainian Law on the 1999 state budget with the Constitution (constitutionality) (case on the funding of courts) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N 28/99 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.4 **Sources of Constitutional Law** - Categories - Written rules - European Convention on Human Rights of 1950.
3.4 **General Principles** - Separation of powers.
4.5.10 **Institutions** - Legislative bodies - Relations with the courts.
4.9.2 **Institutions** - Public finances - Budget.

Keywords of the alphabetical index:

Independence of the courts / Administration of justice, non-interference / Expenditure not provided for by law.

Headnotes:

The aim of the functional separation of public authorities into legislative, executive and judicial authorities is the delimitation of responsibilities between the different organs of the public authorities and the prohibition of the appropriation of full state powers by one of these authorities.

In Ukraine, justice is dispensed exclusively by the courts. The Constitution embodies the principles of the independence of judges as the organs of the judicial authority and of non-interference in the administration of justice.

The special arrangements for the funding of the courts represent one of the constitutional guarantees for the independence of judges. This guarantee mechanism is represented by the state's duty to ensure the proper financial and material conditions for the functioning of the courts and the judges by making provision in the national budget for the expenditure pertaining to the maintenance of the courts. The centralised procedure for the funding of the judicial organs by means of the national budget to a level which guarantees the necessary economic conditions for the full and independent administration of justice and the financing of the needs of the courts (expenditure for trials, running costs, maintenance and repairs, security, logistics, postal expenses etc) is designed to ensure the freedom of the courts from any outside influence. This procedure is aimed at ensuring judicial activity on the basis of the principles and provisions of the Constitution.

The absence of established criteria for the financing of the courts by the central government cannot serve as a justification for the legislative or executive authorities to define the relevant figures arbitrarily, since the necessary amounts in the national budget for the upkeep of the courts cannot be reduced to a level which fails to comply with the constitutional provisions regarding the funding of the judicial system. The budgetary appropriations for the maintenance of the judicial authority are directly protected by the Constitution and cannot be reduced by the organs of the legislative or executive authorities below the level which ensures the complete and independent administration of justice in accordance with the Law.

The Constitution defines the mechanism for securing the funding of the judicial authorities, to be used by the *Verkhovna Rada* (parliament) of Ukraine which is responsible for approving the national budget, amending it and monitoring its execution. The execution of the budget comes within the sphere of competence of the Cabinet of Ministers of Ukraine.

Summary:

Article 19 of the Ukraine Law on the 1999 state budget establishes the list of items of expenditure in the national and the local budgets for 1999, on the statutory basis of the economic distribution of costs: the emoluments for staff of the budgetary institutions; supplementary remuneration etc. The financing of the

requisite expenses by the national and local budgets is effected primarily by the treasury paymasters of the appropriate budgetary resources.

The Law does not protect the circle of subjects of the budgetary relations (the budgetary institutions), but the objects of these relations (items of budgetary expenditure according to the economic distribution of costs). Since the subjects of these relations are the budgetary institutions, the list of statutory items of expenditure is limited to the remuneration of staff in general, including those of the judicial organs and the judges, as members of the staff of the budgetary institutions.

By authorising the Cabinet of Ministers, under certain conditions and at the proposal of the Finance Ministry, to limit the expenditure ordered by the treasury paymasters while taking account of the primordial importance of financing in full the expenditure provided for by Law, the *Verkhovna Rada* enabled the Cabinet of Ministers to reduce the funds made available for the maintenance of the courts in the same manner as non-statutory expenditure.

The restriction in the funds available to the judicial authorities fails to guarantee the necessary conditions for the full and independent administration of justice and the functioning of the courts, undermines the confidence of citizens in the public authorities and impairs the promotion and protection of human rights and freedoms.

Furthermore, the independence of the judicial power is recognised under international law.

The provisions of the contested legislation which relate to expenditure provided for under the Law (Article 19 of the Ukraine Law on the 1999 state budget) are in conformity with the Constitution.

The provisions of Article 42 of the disputed Law in which the Cabinet of Ministers is authorised to restrict the expenses in the national budget earmarked for the judicial authorities, without taking into account the guarantees for their payment incorporated in the provisions of the Constitution, are thus unconstitutional.

Supplementary information:

Legal norms to which the Court referred:

- Articles 6, 85, 116, 124, 126, 129 and 130 of the Constitution;
- Articles 19 and 42 of the Ukraine Law on the 1999 state budget;
- Articles 1 and 3 of the Ukraine Law on the status of judges;
- Article 6.1 ECHR;
- Paragraphs 1 and 7 of the Basic Principles on the Independence of the Judiciary (UN General Assembly Resolutions 40/32 and 40/146 of 29 November and 13 December 1985);
- Principle I.2.b of Recommendation no. R (94) 12 of the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges (adopted on 13 October 1994);
- Item 27 of the Programme of Action adopted by the Second World Conference on Human Rights on 25 June 1993.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-2-003

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 03/06/1999 / **e)** 1-8/99 / **f)** Case concerning the official interpretation of the provisions of Article 12.6 of the Law on the social and legal protection of military personnel and members of their family, of Article 22.4 and 22.5 of the Law on the militia and Article 23.6 of the Law on the fire fighting service (case concerning the official interpretation of the term "member of family") / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N 24/99 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.14 **Sources of Constitutional Law** - Categories - Written rules - Other international sources.
2.3.7 **Sources of Constitutional Law** - Techniques of interpretation - Literal interpretation.
2.3.8 **Sources of Constitutional Law** - Techniques of interpretation - Systematic interpretation.
5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.3.11 **Fundamental Rights** - Economic, social and cultural rights - Right to housing.
5.3.14 **Fundamental Rights** - Economic, social and cultural rights - Right to a sufficient standard of living.

Keywords of the alphabetical index:

Military personnel, member of family, definition / Housing, payment, benefit / Residence, temporary, for service purposes / Dependant.

Headnotes:

The expression "member of family of military personnel" is understood as meaning a member of the family of a soldier, a militiaman or a fireman who has a clearly defined legal relationship with the beneficiary of the right to a benefit consisting of the payment of housing and related expenses. This relationship may derive from: a blood relationship or a marriage relationship; prolonged residence with the soldier, militiaman or fireman; or co-habitation with the latter. The family circle of the soldier, militiaman or fireman includes the spouse, children and parents. The children are members of the family irrespective of whether they are the children of one of the spouses, whether common or adopted, legitimate or born out of wedlock. Other persons may be recognised as members of the family of a soldier, militiaman or fireman on condition that they reside permanently with the beneficiary of the right to the benefit concerned and co-habit with him.

A dependent member of family of military personnel is a person completely dependent on the latter or who receives from him the assistance which constitutes his or her main and constant source of livelihood. In order to acquire the right to the benefits provided under the laws of Ukraine, it is not necessary to know who (either the soldier, militiaman, fireman or the family member) is the owner (co-owner) or tenant of the dwelling. The right to the benefit covering the cost of the use of a dwelling and the associated charges in respect of a member of the family of a soldier, militiaman or fireman is established in each individual case by the competent organs or organisations or, in cases of dispute, by the ordinary courts.

Summary:

An analysis of the provisions of the Constitution and of various normative acts in force in the different fields of legislation (including 24 laws of Ukraine establishing the benefit of payment of housing and expenses, together with 40 other laws of Ukraine using terms amenable to official interpretation and a series of international treaties ratified by Ukraine) leads to the conclusion that there exists no normative definitions concerning the concepts: "member of family" and "dependent".

The Constitution and the legislation in force contain sufficient legal bases for the official interpretation of the terms "member of family" of a soldier, militiaman or fireman, "member of family" residing with a militiaman, or "member of family" dependent on a soldier, by applying the systematic or grammatical methods of interpretation together with other methods of interpretation.

The essential legal basis for the interpretation of the concepts of "member of family", "member of family" residing with a militiaman, "member of family" dependent on a soldier derives from the recognition by the Constitution of the human being as the highest social value (Article 3 of the Constitution), the declaration

that Ukraine is a social state (preamble and Article 1 of the Constitution), the right to social protection for all citizens at a standard of living not lower than the minimum living standard established by Law (Article 46 of the Constitution), all of which are principles applied in the armed forces of Ukraine and other military-type formations. The same protection extends to the members of their families (Article 17 of the Constitution), the right to housing (Article 47 of the Constitution), to a standard of living sufficient for citizens and their families (Article 48 of the Constitution) and a free choice of place of residence (Article 33 of the Constitution). Further, the constitutional provisions according to which marriage is based on the free consent of a woman and a man, each of these spouses having equal rights and duties (Article 51 of the Constitution), the equality of children in their rights regardless of their origin and whether they are born in or out of wedlock (Article 52 of the Constitution), together with other constitutional norms and principles, are of significant importance for understanding the notion of "member of family".

The concepts of "privileges" and "benefits" are not identical, which explains why the granting of benefits to a member of family residing with a militiaman in a village or town is not incompatible with the above-mentioned constitutional provisions.

As regards the concept of "member of family", the Constitutional Court bases its reasoning on the objective difference in its definition, depending on the field of legislation concerned.

The determining factor in the concept of "dependant" is whether or not the individual concerned enjoys a standard of living lower than the minimum living standard established by law, in the words of Article 46.3 of the Constitution. Before the legislative definition of the minimum standard can be assessed as a criterion for recognising the members of the family of military personnel as "dependants", the determining factor is the minimum standard of living index established by the Law.

The legislation requires not only certain preconditions for belonging to the category of dependant family member of a member of the military with regard to age, ability to work and total monthly income, but also the compulsory condition of co-habitation. Taking the legislative provisions into account, however, family members who have continued to live temporarily in the soldier's residence at his previous place of service, if the latter has been posted elsewhere for further service or training, are also included.

Supplementary information:

Legal norms to which the Court referred:

- Preamble, Articles 1, 3, 17, 33, 46, 47, 48, 51 and 52 of the Constitution;
- Provisions of Article 12.6 of the Law on the social and legal protection of military personnel and members of their family;
- Article 22.4 and 22.5 of the Law on the militia;
- Article 23.6 of the Law on the fire fighting service.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-2-002

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 02/06/1999 / **e)** 1-20/99 / **f)** Case concerning the conformity of the draft law amending Article 46 of the Constitution with Articles 157 and 158 of the Constitution of Ukraine (case concerning the amendment of Article 46 of the Constitution) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N 24/99 / **h)** .

Keywords of the Systematic Thesaurus:

1.4.3 **Constitutional Justice** - The subject of review - Constitution.
2.1.1.1 **Sources of Constitutional Law** - Categories - Written rules - Constitution.
3.5 **General Principles** - Social State.

4.1 **Institutions** - Constitution-drafting body.
4.5.6.2 **Institutions** - Legislative bodies - Law-making procedure - Right of amendment.
5.2.4.2.7 **Fundamental Rights** - Civil and political rights - Equality - Criteria of distinction - Age.
5.3.12 **Fundamental Rights** - Economic, social and cultural rights - Right to social security.

Keywords of the alphabetical index:

Constitutional review / Pension, protective guarantees.

Headnotes:

Citizens' right to social protection does not depend on the age they reach, indeed Article 46 of the Constitution does not even include any reference to "age". The right concerned is guaranteed for all citizens in need, irrespective of the age group to which they belong. According to the same article, citizens' right to a pension does not depend on reaching a particular age, but depends entirely on the social duty of the social state and the legislative practice in Ukraine. The right of citizens to social protection in old age does not consist merely of a guaranteed pension, but includes other allowances prescribed by Law.

One of the most important conditions for the statutory basis of relations between citizens and the state and for guaranteeing the principle of the inalienability of human rights and freedoms is the stability of the Constitution, which is itself essentially defined by the legal content of the basic Law. The inclusion in the Constitution of excessively detailed provisions deriving from current legislation would result in the need for frequent amendments which would have adverse effects on the stability of the basic Law.

Summary:

In the draft legislation "on the amendment of Article 46 of the Constitution of Ukraine", the right of citizens to social protection in old age is linked to a particular age which they must reach; more particularly, citizens are entitled to social protection, which covers entitlement to a guaranteed old-age pension from the age of 55 years for women and 60 years for men. The proposed amendments restrict the rights of citizens to social protection during old age.

The draft legislation on amending the Constitution with regard to the right to social protection complies with Article 158 of the Constitution, but does not comply with Article 157 of the Constitution insofar as it defines citizens' rights to social protection in old age in terms of their age.

The Constitutional Court also found that parliament had failed to comply with the constitutional procedure for examining a draft Law on the amendment of the Constitution.

Supplementary information:

Legal norms to which the Court referred:

- Articles 46, 157 and 158 of the Constitution.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-2-001

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 19/05/1999 / **e)** 1-12/99 / **f)** Case concerning the official interpretation of Article 86 of the Constitution of Ukraine (regarding inquiries by National Deputies of Ukraine) / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette), N 20/99 / **h)** .

Keywords of the Systematic Thesaurus:

3.4 **General Principles** - Separation of powers.

4.5.9 **Institutions** - Legislative bodies - Relations with the executive bodies.
4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.
4.6.7 **Institutions** - Executive bodies - Relations with the legislative bodies.
4.10.2 **Institutions** - Armed forces, police forces and secret services - Police forces.

Keywords of the alphabetical index:

Police forces, duties / Inquiry by a member of parliament / Judicial authority, independence / Judicial investigation, commencement, request.

Headnotes:

A National Deputy (member of parliament) of Ukraine does not have the right to submit requests or proposals to the ordinary courts, the presidents of courts or individual judges with regard to specific cases. A request or proposal from a Ukraine member of parliament submitted to the heads of state security bodies cannot compel the latter to check information concerning specific citizens. If the request or proposal by the Ukraine member of parliament fails to contain sufficient information on an alleged offence, it cannot justify a decision to commence an investigation. If the state security bodies receive from a Ukraine member of parliament a request or proposal calling for the opening of an investigation, the heads of these bodies must act in accordance with the provisions of the special legislation governing investigations in Ukraine.

Summary:

According to the provisions governing constitutional appeals, members of the Ukraine parliament are only authorised to raise questions through the administrative bodies of the *Verkhovna Rada* (parliament) of Ukraine and the Cabinet of Ministers of the Ukraine Government. Further, questions raised by Ukraine members of parliament and submitted at sittings of the *Verkhovna Rada* may be addressed to the persons in charge of other public authorities and local government bodies and to the directors of business firms, institutions and other organisations located on the territory of Ukraine, irrespective of their subordination and forms of ownership.

In order to solve questions arising within the constituency of a National Deputy of Ukraine, the latter enjoys the right "to present an inquiry to ... the chief officers of bodies of state power" and the organs of citizens groups, and also "the chief executives of enterprises, institutions and organisations, ... irrespective of their subordination and forms of ownership". Such inquiries by national deputies of Ukraine are not established on an institutional basis in the Constitution.

National deputies cannot present inquiries contrary to the Law. This follows directly from Article 19.2 of the Constitution which provides that "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". Article 86 of the Constitution does not define the scope of the questions which national deputies can ask in their inquiry or proposal. Nevertheless, certain restrictions in this respect are provided for under other .

With a view to ensuring the proper administration of justice, for example, the Constitution guarantees the independence and immunity of judges and prohibits the influencing of judges in any manner whatsoever. In the administration of justice, judges are independent and subject only to the law.

Inquiries by national deputies of Ukraine must always specify the position of the National Deputy concerned with regard to the judicial decision or the actions of the relevant judge, as well as any doubts which the National Deputy might have concerning the accuracy of a decision by a court etc. The demands contained in such inquiries and proposals cannot fail to exert a certain objective influence on judges.

The state security service is a public organ with a special duty. In accordance with arrangements established by the Law, the state security service is required to reply to inquiries by permanent and temporary committees of the *Verkhovna Rada* of Ukraine and national deputies of Ukraine. Nevertheless, investigations are only carried out for reasons provided under the law which are specified in the written order issued by the investigating judge, the instructions of the procurator, the decisions of the courts, or the requests by public authorities, institutions or organisations. National deputies of Ukraine themselves do not have the right to issue such orders and instructions. The findings of investigations may be used

exclusively with a view to instituting criminal proceedings, carrying out urgent investigations, seeking practical data which may serve as evidence in a criminal case, to prevent, halt or inquire into crimes or subversive activities against Ukraine, to search for criminals or missing persons, for the mutual information of services authorised to conduct investigations and of other organs for keeping public order, and also to inform the public authorities in accordance with their powers.

An inquiry by a National Deputy of Ukraine consisting of a request or proposal addressed to the officials in charge of state security organs does not necessarily result in the verification of any information whatsoever concerning individual citizens, nor justify the conduct of investigations, unless they provide the information required under the Law in respect of criminal intentions, crimes committed by unidentified persons, or persons having committed or preparing to commit crimes etc.

Supplementary information:

Legal norms which the Court referred:

- Articles 19 and 86 of the Constitution.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-1-003

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 03/12/1998 / **e)** 17-RP/1-40/98 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

4.5.4 **Institutions** - Legislative bodies - Organisation.
4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.
5.2.22 **Fundamental Rights** - Civil and political rights - Freedom of association.

Keywords of the alphabetical index:

Normative act / Parliament, member / Parliamentary group, establishment.

Headnotes:

The terms "group of members" and "parliamentary group" do not feature in the Constitution. The right of members of the Parliament (*Verkhovna Rada*) to join parliamentary groups is based on Ukrainian law, which makes the establishment and functioning of such groups subject to the Parliament's Rules of Procedure and the laws regulating members' activities. The Rules of Procedure are a normative act, not a law.

The Parliament's activity is an integral part of the national community's life and is based on the principles of political, economic and ideological diversity.

Following the coming into force of the Constitution, organisational problems concerning the Parliament's activity, including the status of members according to the law, must be solved by the Parliament itself in accordance with national law, and specifically the law on its Rules of Procedure.

Summary:

Sovereignty lies with the people - the sole source of the state's authority. They exercise that authority directly through the organs of state power and through the administrative organs of local self-government. The Constitutional Court bases its conclusions on the fact that the Parliament is a public legislative body, responsible for representing the people, passing laws and exercising other powers conferred on it by the Constitution.

All the members elected from multi-seat and single-seat constituencies have full authority to represent the people in the Parliament, are answerable to them, and have a duty to express and protect their interests. In exercising their powers as members, in the Parliament and elsewhere, they enjoy equal rights, which may not be restricted on grounds of membership or non-membership of a particular parliamentary group. They are covered by the state guarantees of freedom of any political activity which is not prohibited by the Constitution and laws of Ukraine.

The principles governing the establishment of parliamentary groups in the Parliament not only restrict the right to form such groups to members of political parties or electoral coalitions whose lists of candidates attracted at least 4% of the vote in the parliamentary elections of 29 March 1998, but also impose other limitations. In particular, the right to form groups is denied to some of the members elected in single-seat constituencies.

The normative act amending to the Parliament's Rules of Procedure, limiting the right to join parliamentary groups to political parties and coalitions whose lists of candidates attracted at least 4% of the vote in the parliamentary elections of 29 March 1998, is unconstitutional.

Regulating the establishment, activity, membership, tasks, functions and aims of groups of members in the Parliament is essentially a practical political problem, which the Parliament must solve in the light of the principles laid down in the Constitution and the law, and within the limits of its constitutional and statutory powers and resources.

To say that the Parliament's Rules of Procedure have "force of law" does not mean that they are a law - i.e. a legal measure adopted by the Parliament in accordance with the legislative procedure laid down in the Constitution.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-1-002

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 25/11/1998 / **e)** 15-RP/1-29/98 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

2.2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources - The Constitution and other sources of domestic law.
4.6.2 **Institutions** - Executive bodies - Powers.
5.3.15 **Fundamental Rights** - Economic, social and cultural rights - Right to health.

Keywords of the alphabetical index:

Medical care / Health, protection / Goodwill payment.

Headnotes:

The constitutional right to health protection, medical care and medical insurance guarantees that medical care will be provided free of charge in state and municipal medical establishments (Article 49 of the Constitution).

The term "medical care" in not defined in the Constitution, in the laws governing medical care or in other legislative or regulatory texts.

In medicine, however, "medical care" covers treatment and preventive measures applied in cases of illness, injury and childbirth and in the course of medical examinations and other medical work. The term "medical service", which is similar in meaning to "medical care", is not currently defined in law or in medical literature.

In the current critical state of public health-care funding, the solution is not a restrictive list of medical services which must be paid for, but a new approach to the problem of safeguarding the constitutional right to medical care. This would involve drawing up, approving and implementing a series of national programmes, with a list of medical services which the state undertakes to provide free of charge for all citizens in state and municipal medical establishments.

Summary:

The Parliament (*Verkhovna Rada*) is responsible for planning, implementing and monitoring social and other programmes at national level in accordance with the Constitution. The provision of the disputed government decree that allows medical establishments providing care and preventive treatment to ask patients for goodwill payments in return for their services is unconstitutional.

Without ruling out or denying the utility of voluntary donations in the interests of the protection of health, the fact remains that charitable activity must take place within the bounds laid down in the law on charity and charitable organisations.

The principles of health protection, taxation and levies are determined exclusively by statute, while the implementation of social policy, including health protection policy, is the responsibility of the government.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1999-1-001

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 29/10/1998 / **e)** 14-RP/1-31/98 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

5.1.2.4.1 **Fundamental Rights** - General questions - Entitlement to rights - Legal persons - Private law.
5.2.4.1.2.1 **Fundamental Rights** - Civil and political rights - Equality - Scope of application - Employment - Private.
5.2.22 **Fundamental Rights** - Civil and political rights - Freedom of association.
5.3.3 **Fundamental Rights** - Economic, social and cultural rights - Right to work.
5.3.9 **Fundamental Rights** - Economic, social and cultural rights - Freedom of trade unions.

Keywords of the alphabetical index:

Collective labour dispute / Contract, employment / Collective agreement / Trade union, discrimination.

Headnotes:

The right to work is guaranteed to every individual, and may be exercised either individually or through a public organisation, including a trade union (Article 36 of the Constitution).

Workers' rights, duties and safeguards are laid down in the Ukrainian Labour Code, which provides, in particular, for legal protection against arbitrary refusal of employment and unfair dismissal. The law has imposed restrictions on the annulment of employment contracts by employers or bodies authorised to represent them, and this provides a legal safeguard against unfair dismissal.

A trade union operating in a business, institution or organisation is any trade union (or branch of a union) constitutionally and legally set up in that business, institution or organisation, by the free choice of its members, to protect the labour, social and economic rights and also the interests of workers, whether or not it is party to a collective contract or agreement.

All trade unions operating in the same business, institution or organisation have the same rights in law. It is the trade unions operating in businesses, institutions or organisations which agree to the termination of employment contracts with their members, in the cases and in the manner specified by law.

Summary:

If there are several trade unions in a business, institution or organisation, they must set up a joint representative body to negotiate and conclude collective agreements. All the trade unions operating in a business, institution or organisation thus have the right to take part in negotiations and to conclude collective agreements.

However, collective contracts or agreements may lawfully be concluded, not only with all the trade unions operating in a business, institution or organisation, but also with some of them. Other bodies authorised to do so by workers may also conclude such agreements. Thus the fact that a trade union is party to an employment contract or labour agreement does not affect the exercise of its powers, and does not determine whether it operates in a particular business, institution or organisation.

All trade unions established and operating in accordance with their rules in businesses, institutions or organisations are equally entitled under the Constitution to protect workers' rights, and the social and economic rights and interests of their members. This includes agreeing to termination of members' employment contracts under the Ukrainian Labour Code.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1998-1-003

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 26/02/1998 / **e)** 1-RP/03/3600-97, 03/3808-97, 1-13/98 / **f)** / **g)** Official Digest, no. 2(4)98 / **h)** .

Keywords of the Systematic Thesaurus:

5.1.2.3.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons - Prisoners.
5.2.4.1.4 **Fundamental Rights** - Civil and political rights - Equality - Scope of application - Elections.
5.2.34 **Fundamental Rights** - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Election, direct representation / Election, proportional representation / Election, status of candidate / Candidate, immunity / Constitutional Court, jurisdiction.

Headnotes:

Ukraine's election law was found to be unconstitutional, primarily because the law violates principles of equality in voting rights. Therefore, it is unconstitutional to preclude prisoners from voting, to preclude dissatisfied candidates from judicial challenges of certain election disputes, and to require candidates to resign from government employment while they are campaigning. Ukraine has a dual-mandate system in which half of the Parliament is elected as individual candidates and half is appointed by the parties in proportion to the percentage of votes that the party receives. Certain parts of this dual-mandate system are unconstitutional where there are advantages to one form of election over the other; for instance, it is unconstitutional for a candidate to run as an individual and to be listed on the party's list as one of the people who the party will send to Parliament if the party receives enough votes. This unfairly allows one person two opportunities to become a deputy. However, the requirement that a party must receive at least 4% of the vote before it has a right to send any of its members to Parliament concerns a political question not open to review by the Court. Finally, it is unconstitutional for the law to grant immunity to candidates; immunity is an extraordinary protection which may only be granted by the Constitution.

Summary:

This case was brought to the Constitutional Court by deputies of Parliament to challenge the constitutionality of Ukraine's new election law dated 24 September 1997.

Under Article 71 of the Constitution, elections to state and local positions are "held on the basis of universal, equal and direct suffrage, by secret ballot". Citizens over the age of eighteen may vote but citizens which a court finds to be incompetent may not vote. Any citizen having voting rights and who is over the age of 21 and who has lived in Ukraine for five years may be elected as a deputy of the Parliament.

The deputies challenge as unconstitutional the section of the law which states that political parties which obtain fewer than 4% of the national vote do not share in the distribution of half of the seats in the Parliament; this half is divided proportionally among all the political parties that receive at least 4 % of the vote. The other half of the seats are determined by individual elections. This question as to whether the 4% threshold violates the Constitution is a political question to be resolved only by the Parliament, and not by the Constitutional Court.

In accordance with constitutional principles of suffrage, the section of the law which states that "electors who did not participate in voting are considered as having supported the will of electors who participated in the elections" is unconstitutional. This section conflicts with Article 69 of the Constitution which states that "the expression of the will of the people is exercised through elections, referendum and other forms of direct democracy". Thus, the will of the people must be expressed directly.

The section of the election law which deprives people incarcerated in prison of the right to vote is unconstitutional. Suffrage is a constitutional right both to elect deputies to the Parliament and to be elected to the Parliament. Under Article 70 of the Constitution, only people that a court has found to be incompetent may not vote. The section of the law which deprives these rights to people in prison is unconstitutional. Under Article 76.3 of the Constitution, a citizen may not run for Parliament if he has been convicted of an intentional crime which has not been cancelled from his record. In so far as the election law contradicts this constitutional provision it is unconstitutional.

The election law requires that deputies running for re-election, as well as servicemen, certain employees of internal affairs bodies, judges, public prosecutors and state employees may not register as candidates unless they submit a personal statement that they will terminate such employment while they campaign. This violates Ukraine's principle of universal and equal suffrage.

The election law restricts in some instances a person's right to challenge an election matter in court. This violates Article 55.2 of the Constitution which "guarantees the right to challenge in court the decisions, actions or omissions of bodies of State power". No exceptions to this right are acceptable and the restrictions in the law which limit access to judicial review are unconstitutional.

There are provisions in the law that do not follow the principle of equal suffrage. As referenced above, Ukraine has a dual mandate system: deputies may be elected individually or as representatives of a political party. Obviously, candidates who run individually must register as a candidate. In addition, a political party must register the members it will select as deputies in the event that it receives more than 4% of the vote and is entitled to its proportion of deputies. It is unconstitutional for a candidate to be listed on both lists because this person has a greater chance of being elected a deputy than a person who is listed on only one list. Likewise the law is unconstitutional in precluding parties from registering candidates in individual mandate districts if they did not also register candidates in multi-mandate districts.

As stated above, Ukraine has a dual mandate system in which half the deputies are elected individually and half are elected as party representatives. The law does not provide for equal possibilities of election in this system. There are differences in nominating and setting the registration lists. Different terms are necessary to nominate candidates from parties depending upon whether the district is a multi-mandate or single- mandate district, and there are also different requirements for making election posters depending on whether the candidate is running individually or for the party. All of these are unconstitutional distinctions.

The election law also grants to candidates the same immunity from prosecution as that enjoyed by elected deputies, the President and judges. The purpose of immunity is to create the proper conditions so

that the deputies may fulfil their duties without interference from the State. This is a higher protection than the right to be free from unlawful arrests set forth in Article 29 of the Constitution. If rights and freedoms, as well as guarantees thereof, are determined exclusively by the laws of Ukraine (Article 92.1 of the Constitution), then the exceptional protection of immunity may only be granted by the Constitution itself, because only the Constitution may provide for such exceptions to the general principle of equality recognised in Ukraine. Because the Constitution does not provide candidates with such immunity, the law providing it is unconstitutional in this regard.

Finally, a section of the election law states that if a candidate runs both as a representative of a party and as an individual candidate, and wins as an individual candidate, then he is automatically removed from the list of candidates put forward by the party because he won a seat as an individual. (This means that the party, which overall received, for example, 20% of the vote, will now have 20% of the deputies, plus one. Thus a vote for this deputy was in essence counted twice. The remedy is to allow candidates to run individually or on a party list, but not both ways.) This provision is unconstitutional because it violates the principle of equal suffrage.

Languages:

Ukrainian.

Identification: UKR-1998-1-002

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 26/12/1997 / **e)** 8-ZP/3/690-97 / **f)** / **g)** Official Digest, no. 1(3)98 / **h)** .

Keywords of the Systematic Thesaurus:

1.7.5 **Constitutional Justice** - Effects - Temporal effect.
2.3.6 **Sources of Constitutional Law** - Techniques of interpretation - Historical interpretation.
4.4.1 **Institutions** - Head of State - Powers.
4.6.9.2.2 **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Municipalities.

Keywords of the alphabetical index:

Local government, head.

Headnotes:

Under the Constitution, the President of Ukraine has the power to appoint heads of local government administrations, but does not have the power to appoint the deputy heads or other subordinate officials of local government. That power belongs to the head of the local government.

Summary:

The deputies of Ukraine's Parliament brought this case before the Constitutional Court to interpret the power of the President to appoint not only the heads of local administration, but also the deputy heads of local administration. The Court finds that the Constitution only allows the President to appoint the heads of local administration, not the deputy heads.

The deputies submit that the President's orders issued in July-December 1996, appointing first deputies and deputy heads of local administrations, do not comply with Article 106 of the Constitution, the pertinent part of which reads: "The President of Ukraine appoints, on the submission of the Prime Minister of Ukraine, the heads of local State administrations". They submit that under Article 118.3 of the Constitution, which states: "The composition of local state administrations is formed by heads of local state administrations", the head of the local state administration should make these appointments, not the President. Article 106 does not state who will appoint the subordinate local administrators. The deputies submit that the President's appointments of officials to these subordinate positions constitutes an unconstitutional extension of his powers.

The President argues that under the law in existence before the Constitution was adopted on 28 June 1996 the local heads would submit to the President those people the local head wanted to be appointed to the subordinate positions, and the President would make those appointments. The President submits that this practice should continue because it complies with the Constitution.

The President correctly sets forth the law and practice prior to the adoption of Ukraine's Constitution. However, nowhere in the Constitution does the Constitution refer to powers of the President to appoint first deputies or deputy heads of local state administrations. Rather, Article 118.3 of the Constitution specifically states that local state administrations "are formed" by the heads of those administrations. In Article 107 of the Constitution, the term "are formed" includes the act of appointing personnel; in addition, the verbatim account of the Parliament's debate of Article 118.3 of the Constitution, also demonstrates that the term "are formed" includes the power to appoint the employees of the local state administration. Because the power to appoint the subordinate local officials is not set forth in the Constitution, the President exceeded his constitutional powers in this regard.Article 152.2 of the Constitution sets forth the principle that when a provision is ruled unconstitutional, it is invalid from the day of the Constitutional Court's decision. According to this principle, other legal acts are valid until the Court rules them unconstitutional. The Court's ruling in this case may not affect prior legal relations, that is, the appointments that the President made before the date of the Court's decision in this case. Therefore, the present appointments of subordinate local officials remain valid, but in the future the President may not use the law that the Court today invalidated to appoint these subordinate local officials.

Languages:

Ukrainian.

Identification: UKR-1998-1-001

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 23/01/1997 / **e)** 7-ZP/01/34-97 / **f)** / **g)** Official Digest, no. 1(3)98 / **h)** .

Keywords of the Systematic Thesaurus:

3.4 **General Principles** - Separation of powers.
4.5.5 **Institutions** - Legislative bodies - Finances.
4.9.3 **Institutions** - Public finances - Accounts.
4.9.6 **Institutions** - Public finances - Auditing bodies.

Keywords of the alphabetical index:

Official, immunity / Financial policy.

Headnotes:

Ukraine's Constitution creates a State body known as the Accounting Chamber which reviews State expenditures on behalf of Parliament. However, Parliament passed a law extending this power to the power to supervise expenditures other than State expenditures and the power to supervise certain income- generating ventures of the State. These are both unconstitutional extensions of power beyond that contemplated by the Constitution and violate the balance of power established by the Constitution. The law also violates the Constitution when it grants immunity to the officials working in the Accounting Chamber. In Ukraine immunity is an extraordinary protection under the Constitution granted only to the President, deputies of Parliament and judges. Only the Constitution has the power to grant immunity, not Parliament. The law violates the Constitution when it allows the Chamber, acting on behalf of the Parliament, to perform executive and judicial functions. Finally, although the Accounting Chamber may review expenditures in local governments, it may only do so to the extent that it concerns funds from the national government. Likewise, the Chamber may review expenditures concerning private business, but only concerning funds from the national government.

Summary:

The case came before the Constitutional Court upon a petition by the President of Ukraine asking the Court to determine the constitutionality of the Parliament's law on the Accounting Chamber. Article 98 of the Constitution is the only reference to the powers and duties of the Accounting Chamber. It reads in full as follows: "the Accounting Chamber exercises control over the use of finances of the State Budget of Ukraine on behalf of the Parliament of Ukraine".

Under Article 8.2 of the Constitution, the Constitution is the highest law in Ukraine. All laws must comply with it, and the Ukrainian Parliament may not pass a law conflicting with the Constitution. However, the Parliament has passed a law creating the Accounting Chamber as an organ of the Parliament, and not as an organ of the Constitution as is set forth in the Constitution.

First, Articles 85 and 92 of the Constitution of Ukraine establish the Parliament's power over financial and economical activity. However, Article 98 of the Constitution establishes the Accounting Chamber as a separate organ under the Constitution. The Accounting Chamber has limited powers derived from the Parliament's powers and, under Article 19 of the Constitution, it may not exceed those powers. [Article 19.2 of the Constitution reads as follows: "Bodies of State power 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."] So, the Accounting Chamber is a constitutional body and the Parliament has no power to take away, restrict or transfer those powers.

Second, Parliament's law on the Accounting Chamber conflicts with the Constitution because it gives the Accounting Chamber wider purposes than those provided under the Constitution. The Constitution states that the Chamber shall "exercise control over the use of finances of the State budget" while the law on the Chamber grants it the power to exercise "State financial and economic control". However, its constitutional power is limited to overseeing how finances are used; it may not itself exercise control over the finances as is stated in the law which Parliament passed.

The law on the Accounting Chamber also improperly extends parliamentary immunity to officials in the Accounting Chamber. Although citizens' rights and freedoms are guaranteed by laws which Parliament passes, immunities are guarantees of a higher level and, logically, should be determined by the Constitution. Because the Constitution does not establish immunity for officials in the Accounting Chamber, Parliament can create no such immunity.

The law also granted to the Accounting Chamber the power both to review costs in the budget and to supervise the government's income. However, under Article 98 of the Constitution, the Chamber may only review costs; it may not oversee income. Thus, the provisions of the law concerning the power to provide profit are unconstitutional. However, the Chamber may conduct business in such matters if this is necessary to supervise how funds are being spent.

Several bodies in Ukraine have control over various financial matters: Parliament, the Cabinet of Ministers, the Fund of State Property, the Head Auditing Board, the Head Board of the State Treasury, and others. These powers are divided into legislative, executive and judicial branches, each with its own powers and limits. In this context, granting executive powers to the Accounting Chamber violates the principle of separation of powers. The law, as it now stands, gives to the Parliament the power to perform executive acts through the Accounting Chamber, which is directly responsible to the Parliament. Thus, the legislative branch may now execute its own laws. This is unconstitutional. The law also grants to the Accounting Chamber the power to act as an investigating agency, that is, to act as the judicial branch; however, it may do so under this law without following procedures such as obtaining a warrant to make a search. It has the power to demand compulsory inspection of companies that have business activities with the State. It also has a power, normally reserved for the executive, of stopping payments and seizing bank accounts. These executive powers are all unconstitutional when used by the legislative branch.

Under the current laws of Ukraine, the term "budget" does not mean property or monetary policy; rather, it means the accumulated financial resources which the State then uses. The means of accumulating the budget is known as "income" or "profits" and the ways in which the budget is used are known as "costs". The power of the Accounting Chamber, under Article 98 of the Constitution, is limited to the control of how the "costs" are used. Supervising the lawful expenditure of funds is charged to Parliament, the Accounting Chamber and the Office of the Prosecutor. Parliament has the highest level of control over financial activity followed by the Cabinet of Ministers, which is charged with carrying out financial policy. The prosecutor reviews the lawfulness of these activities. The power of the Accounting Chamber is limited by

the Constitution to ensuring that the funds are lawfully used according to the purposes established by Parliament.

The law grants to the Accounting Chamber control over 1) objects which are not subject to privatisation, 2) use of gold reserves and precious metals, 3) use of State property, 4) property that is at the disposal of the National Bank, and 5) the land fund of Ukraine - matters which are reserved either for the Cabinet of Ministers or for the Parliament. Therefore, transfer of these powers to the Chamber is unconstitutional. Likewise, the law is unconstitutional in so far as it grants the Chamber the power to oversee foreign loans and assistance.

The Accounting Chamber's sphere of power is limited to control over those matters which are in the State budget. The law on the Accounting Chamber allows it to supervise a number of monetary items which are not a part of the State budget and, therefore, are not within the Chamber's power of control: the pension fund; the financial resources of economic, social, scientific, and cultural development; finances for the protection of the environment; economic assistance from foreign States or international organisations or foreign credits obtained without the guarantees of the Cabinet of Ministers. Likewise, the law on the Accounting Chamber improperly gives it control over non-State funds of public organisations, over funds of local government bodies (except over those funds transferred from the State budget to the local government under Article 143.3 of the Constitution), and over the budget of the Autonomous Republic of Crimea.

The law also provides that the Chamber may exercise control over various private businesses that use funds from the State budget. Under Article 13.4 of the Constitution, the State protects the rights of ownership and business activity. Therefore, under this general principle, the control of the Accounting Chamber is limited to control over only those funds which come from the State budget. The same general principle applies to the Chamber's supervision of citizens' groups, who, in addition, have a guarantee under Article 41 of the Constitution of being able to dispose of property; therefore, the Accounting Chamber may control the funds of citizens' groups only in so far as those funds come from the State budget.

Supplementary information:

This is the second part of the question first considered in Case no. 1/1509-97, 11/07/1997, (*Bulletin* 1997/2 [UKR-1997-2-003]). That case determined that the Parliament exceeded its power in interpreting the provision of the Constitution which establishes the Accounting Chamber as a constitutional organ. The present case determines which part of that law is constitutional and which part is unconstitutional.

Languages:

Ukrainian.

Identification: UKR-1997-3-006

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 25/11/1997 / **e)** 6-ZP/18/1148-97 / **f)** Dzyuba's case / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.
1.4.3 **Constitutional Justice** - The subject of review - Constitution.
1.4.5 **Constitutional Justice** - The subject of review - Laws and other rules having the force of law.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
5.3.11 **Fundamental Rights** - Economic, social and cultural rights - Right to housing.

Keywords of the alphabetical index:

Military courts, appeal / Apartment, allocation / Administrative recourse.

Headnotes:

Any person, whether they are a citizen of Ukraine, a foreigner or a stateless person, shall have a guaranteed Constitutional right to lodge with a court of general jurisdiction a complaint on a decision, action or failure to act of any body of State power, body of self-government, or legal and administrative official, if that person considers that such a decision, action or failure to act, violates or limits their individual rights and freedoms or interferes with their fulfilment and, therefore, court protection of the rights or freedoms affected is required.

Such complaints shall be examined directly by the courts irrespective of the fact that the law which was adopted before the Constitution came into effect set up different procedures for hearing them.

The fact that a complaint has been submitted to another body or to an administrative official of senior level shall not interfere with the lodging with the court of a claim concerning the same decisions, actions or failures to act.

Summary:

The ground for hearing the case was ambiguity as to the application of provisions of the Constitution and laws of Ukraine by the courts concerning an individual's right to lodge a complaint against illegal actions of an administrative official. The applicant, who serves in the Navy, complained about the absence of legal basis for the decision of a military court of garrison which refused to accept a complaint about the illegal decision of the Chief of the garrison concerning the allocation of apartments. The military court of the Navy, in accordance with the cassation procedure, confirmed the above verdict. The Deputy Head of the Supreme Court of Ukraine, in accordance with the court supervision procedure, refused to lodge a protest against the above verdict and confirmed the fact that disputes on matters of registration of citizens for apartments and the allocation of apartments shall not be subject to court proceedings.

The applicant stated in her application, however, that her complaint concerned illegal actions of the Chief of the garrison in settling questions of allocation of apartments and not the procedure involved in settling disputes about such matters. Moreover, citizens have the statutory right to appeal to a court (servicemen, to a military court) with a complaint, if they consider that a decision, action or failure to act of a state body, or of legal or administrative officials in the process of fulfilment of their official duties violated their rights or freedoms.

The Constitutional Court states that according to Article 55 of the Constitution, everybody is guaranteed the right to appeal to a court with a complaint about decisions, actions or failures to act of bodies of state power, bodies of self-government, or state officials. In this manner, the mechanism of realisation of the constitutional right of court protection was established. It follows from here that the Constitution guarantees and ensures for every individual the right to appeal to a court for protection of their rights and freedoms.

Languages:

Ukrainian.

Identification: UKR-1997-3-005

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 30/10/1997 / **e)** 5-ZP/18/203/-97 / **f)** Ustymenko's case / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.

5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
5.2.19 **Fundamental Rights** - Civil and political rights - Right of access to administrative documents.
5.2.26.1 **Fundamental Rights** - Civil and political rights - Right to private life - Protection of personal data.

Keywords of the alphabetical index:

File, medical, divulgation / Standards, european.

Headnotes:

It is prohibited not only to collect, but also to preserve, use and distribute confidential information about a person without the agreement of this person, with the exception of cases defined by Law, and only for the purpose of protecting national security, economic well-being and individual rights and freedoms. Confidential information includes in particular, information about a person's education, marital status, state of health, date and place of birth and property status and other personal information.

Constitutional limits and exceptions are set by the Constitution itself, but not by other laws.

Summary:

The applicant, Mr Ustymenko, was registered with the consultative psychiatric department of the Psychoneurological Dispensary at the request of his employer. This, the applicant argued, limited his possibilities of finding work and caused him moral and material losses, as the information was divulged without his agreement. On the grounds of confidentiality of medical information he was refused access to information concerning both the reasons for his registration with the psychiatric department and the persons who were informed by this body of his registration.

The Prosecutor's office, in accordance with statutory provisions, refused to transmit to Mr Ustymenko any information available to it concerning his state of health. Mr Ustymenko's complaints about these actions were rejected by the courts of general jurisdiction including the Supreme Court of Ukraine on the basis of Article 12 of the Law "On the Prosecutor's Office", which introduced some exceptions preventing the enjoyment of the right of access to the courts.

National legislation did not, however, define all the acceptable modes of accumulation, preservation, use and distribution of information, in particular, concerning an individual's mental state and his forced examination and treatment. There is no procedure for protection of individual rights against any illegal intrusion in his/her personal life from psychiatric bodies. The Law "On information" defines only general principles of citizens' access to information personally related to them. The mechanism of realisation of the above right is not properly defined. There is no regulation on the use of confidential data in the sphere of mental health. In this respect, Ukrainian legislation fails to meet international law and European standards in the field of protection of personal data, particularly in connection with the accession of Ukraine to the Council of Europe.

The Constitutional Court held that Article 32.2 of the Constitution forbids the collection, preservation, use or distribution of confidential information about a person without his/her agreement, with the exception of the cases defined by Law and only in the interests of protecting national safety, economic well-being and individual rights. Every person must have the right of access to information about them accumulated by State organs, bodies of self-government, institutions and organisations, if this information does not belong to a class of State or other secrets protected by Law. Medical information, i.e. information about the state of health of a person, their medical history, the purpose of proposed examinations, treatment methods, and assessments of possible future health problems, is confidential information, that is to say, it is information to which access is limited.

In case of a refusal to transmit such information or where medical information is hidden from the patient concerned, members of his family or a legal representative, they may appeal directly to the court or to a medical institution, at their choice, with a complaint. Everybody has the constitutional right to appeal

directly to a court of law. The final decision of an official authority cannot be an obstacle against further appeals to a court of law.

Languages:

Ukrainian.

Identification: UKR-1997-3-004

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 03/10/1997 / **e)** 4-ZP/18/183-97 / **f)** Entering into force of the Constitution of Ukraine case / **g)** *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

1.4.3 **Constitutional Justice** - The subject of review - Constitution.
3.4 **General Principles** - Separation of powers.
4.5.6 **Institutions** - Legislative bodies - Law-making procedure.

Keywords of the alphabetical index:

Constitution, entry into force / Constitution, promulgation / Law, entry into force.

Headnotes:

The Constitution enters into force on the day it is adopted by the *Verkhovna Rada* (Parliament) of Ukraine from the moment of declaration of the results of voting for the draft of the Constitution of Ukraine as a whole at the plenary session of the *Verkhovna Rada*.

Summary:

The reason for the hearing was the constitutional petition of Mr Barabash. In June 1996 Mr Barabash appealed to the Supreme Court of Ukraine with a complaint concerning the decision of the Central Election Commission for the Election of People's Deputies of Ukraine refusing to accept for a new consideration a question of invalidity of the new election of a people's deputy.

After considering the complaint materials, the judge of the Supreme Court of Ukraine with the enactment of 8 July 1966, refused to accept the complaint, on the grounds that it was not subject to consideration by the courts of law.

Mr Barabash then submitted a complaint concerning this refusal, in accordance with the supervision procedure. He claimed that the reasons of the refusal to accept the complaint for consideration were not in conformity with the content of the Constitution which was already valid by the day the above decision was taken and in particular, with the provisions of Article 55 of the Constitution.

The Supreme Court, in a judgment of 26 September 1996, stated that there were no grounds for protesting against the proper decision and for satisfying the claim. It was also indicated that when the judge of the Supreme Court took his decision the Constitution was not valid. Protesting against this position Mr Barabash presented another complaint in accordance with the supervision procedure. The Supreme Court's judgment of 12 November 1996 stated that constitutional norms could not be applied in order to settle questions about acceptance of a proper complaint in view of the fact that the Constitution was published on 13 July 1996.

In accordance with Article 94.5 of the Constitution which reads "The Law shall come into force ten days from the moment of its official publication unless the Law itself states otherwise, but not earlier than on the day of publishing it", the Constitutional Court stated that the provisions of Article 94 of the Constitution concerning the entry into force of laws relate to acts of the legislative body and not to the Constitution itself.

The reasoning of the Constitutional Court was as follows. The Constitution as the basic law of the State is an act of the constituent power belonging to the people. The constituent power in relation to the so-called established powers is the primary power: the Constitution as such recognises the principle of the division of the State power into legislative, executive and judicial powers and defines the principles of organisation of the above powers, including the legislative power. The adoption of the Constitution by the *Verkhovna Rada* of Ukraine meant that in this case the constituent power was realised by the Parliament.

The Constitution itself became valid from the moment that the results of voting for the draft Constitution as a whole at the plenary session of the *Verkhovna Rada* were declared.

Languages:

Ukrainian.

Identification: UKR-1997-2-003

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 11/07/1997 / **e)** N 1/1909-97 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.4.5 **Constitutional Justice** - The subject of review - Laws and other rules having the force of law.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.5.10 **Institutions** - Legislative bodies - Relations with the courts.

Keywords of the alphabetical index:

Constitutional Court, jurisdiction / Constitution, interpretation, jurisdiction.

Headnotes:

Under Chapter XV.6: "Transitional Provisions" of the Constitution, prior to the creation of the Constitutional Court, the Verkhovna Rada of Ukraine had the right to interpret only the laws of Ukraine, and did not have the right to interpret the Constitution.

In adopting the Decree of 1 October 1996 "On the interpretation of Article 98 of the Constitution of Ukraine", the Verkhovna Rada exceeded its constitutional powers.

Summary:

The author of the constitutional appeal - the President of Ukraine - requests that the resolution of the Verkhovna Rada of Ukraine of 1 October 1996 "On the interpretation of Article 98 of the Constitution of Ukraine" be declared unconstitutional.

Following the adoption of the 1996 Constitution of Ukraine, the special powers as regards official interpretation of the Constitution and the laws of Ukraine were amended: the Verkhovna Rada delegated its powers to the Constitutional Court (Article 150.2 of the Constitution), which, according to Article 147 of the Constitution, is the sole body of constitutional jurisdiction in Ukraine. These changes are determined by the transition to the division of legislative, executive and judicial powers (Article 6.1 of the Constitution). The bodies of legislative, executive and judicial power work together according to the constitutionally prescribed system of checks and balances, exercising their powers within the limits established by the Constitution and in accordance with the laws of Ukraine (Article 6.2.2 of the Constitution).

Since the Constitutional Court had not been created prior to the entry into force of the Constitution, Chapter XV.6: "Transitional Provisions" of the Constitution had provided that, prior to the creation of the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine would be responsible for interpreting laws.

In addition to this main argument in favour of the Verkhovna Rada, other arguments were also presented in the proceedings. It was maintained, for example, that the obligation on the legislature to adopt the Law "On the Chamber of Accounting" and the insufficiently precise status of the Chamber of Accounting, as provided for in Article 98 of the Constitution, gave the Verkhovna Rada the right to interpret the Constitution.

These arguments do not stand up to scrutiny. Close inspection of the text of the Constitution shows that the term "law" is used here both in a broad sense and in a narrow sense. In the broad sense (including also the Constitution), the term "law" is employed, for example, in Articles 13, 24, 35, 58 and 68 of the Constitution, which lay down universally recognised principles - equality before the law, inadmissibility of refusal to apply the law on the ground of religious beliefs, retroactive force of the law, non-exemption from legal liability on the ground of ignorance of the law. In general, in the Constitution, the term "law" is used in the narrow sense, and concerns only Ukrainian laws, that is to say, this term is often used in the expression "Constitution of Ukraine and laws of Ukraine" (Articles 10, 15, 36, 79, 126, 150 of the Constitution and other).

The use of this expression in the Constitution, specifically in Article 150, is no accident. The Constitution was adopted by the Verkhovna Rada, in the name of the Ukrainian people (preamble of the Constitution), who, according to Article 5 of the Constitution, have the sole right to determine and change the constitutional system in Ukraine. This right cannot be usurped by the state, its organs or officers. Thus, the adoption of the Constitution by the Verkhovna Rada was a direct act of exercise of the sovereignty of the people, which gives the Verkhovna Rada of Ukraine the power to adopt the Constitution once only. This principle is affirmed by Article 85.1 of the Constitution, which does not allow for the possibility of the Verkhovna Rada adopting the Constitution, and also by Article 156 of the Constitution, according to which any changes to the sections which establish the foundations of the constitutional system, following their adoption by the Verkhovna Rada, must be ratified by referendum.

The logical consequence of these provisions is to restrict the powers of official interpretation of the Constitution to the Constitutional Court, as an independent judicial authority, in lieu of the Verkhovna Rada.

The Verkhovna Rada argues that its obligation to adopt the Law on the Chamber of Accounting necessitated a preliminary interpretation of Article 98 of the Constitution. The Decree of the Verkhovna Rada "On the interpretation of Article 98 of the Constitution of Ukraine", however, was adopted almost three months after the adoption of the Law of Ukraine "On the Chamber of Accounting of the Verkhovna Rada of Ukraine".

The argument that the insufficiently precise status of the Chamber of Accounting, as provided for in the Constitution, could not be overcome other than by an interpretation of the current Constitution cannot be accepted. If the Verkhovna Rada felt that Article 98 of the Constitution did not define the status of the Chamber of Accounting sufficiently precisely, it could have resolved the matter by adopting amendments to the Constitution, as provided for in Article 155 of the latter.

The Constitutional Court found the Decree of the Verkhovna Rada of 1 October 1996 "On the interpretation of Article 98 of the Constitution of Ukraine" to be unconstitutional.

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1997-2-002

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 23/06/1997 / **e)** N 3/35-313 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

1.1 **Constitutional Justice** - Constitutional jurisdiction.
1.4.5 **Constitutional Justice** - The subject of review - Laws and other rules having the force of law.
2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources.

4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.

Keywords of the alphabetical index:

Constitutional Court, jurisdiction / Normative act.

Headnotes:

According to Chapter XV.1: "Transitional Provisions" of the Constitution, laws and other normative acts adopted prior to the entry into force of the Constitution must not contradict the latter, and their constitutionality is open to review.

Among these normative acts are acts of the Praesidium of the Verkhovna Rada. By virtue of their special place in the hierarchy of Ukrainian normative acts and the particular status of the Praesidium of the Verkhovna Rada in the Ukrainian system of state authorities prior to 14 February 1992, the issue of the compliance of normative acts with the current Constitution falls within the jurisdiction of the Constitutional Court, but not of the ordinary courts.

Depending on their nature, non-normative legal acts, as opposed to normative acts, do not establish general rules of conduct, but consist of concrete decisions directed at isolated individuals or legal entities, decisions which, once applied, lose their force.

Summary:

The applicants - national deputies of Ukraine - maintain that Article 150.1 of the Ukrainian Constitution contains an exhaustive list of those bodies whose legal acts may form the subject of an appeal to the Constitutional Court. This article refers to the Verkhovna Rada (Parliament) as a body where all the national deputies of Ukraine are represented, whereas Chapter IV.3.2. of the Law of Ukraine "On the Constitutional Court of Ukraine" would seem to militate against such a wide interpretation of this , by referring not only to the Verkhovna Rada but also to its organs. The deputies request that the provisions (the expression "its organs") of Chapter IV.3.2 of the Law of Ukraine "On the Constitutional Court of Ukraine", as adopted by the Verkhovna Rada on 16 October 1996 N 422/96-RS, be declared unconstitutional.Article 150.1 of the Constitution refers to the power of the Constitutional Court to resolve issues concerning the constitutionality of laws and other legal acts of the Verkhovna Rada (of Ukraine), namely, acts of the President, acts of the Cabinet of Ministers and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.

Chapter IV.3.2: "Final and Transitional Provisions" of the law of Ukraine "On the Constitutional Court of Ukraine" extends the jurisdiction of the Constitutional Court to matters concerning the constitutionality of laws, to other legal acts of the Verkhovna Rada and its organs, to acts of the President, acts of the Cabinet of Ministers and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea, adopted before the Constitution entered into force.

On the basis of this aspect of the transitional provisions of the Constitution, the extension of the Constitutional Court’s jurisdiction to matters concerning the constitutionality of legal acts adopted before the Constitution entered into force is legal only in the case of normative acts.

The amendments made to the 1978 Constitution by the Law of Ukraine of 14 February 1992 established the Verkhovna Rada as the sole body with legislative power in Ukraine and the President as head of state and the executive, within the framework established by the Constitution. Prior to these amendments, the Praesidium of the Verkhovna Rada of Ukraine acted as the supreme body of state power of the Republic, after the Verkhovna Rada: it delivered decrees which served to modify or amend legislative acts, provided that these acts were ratified by a plenary session of the Verkhovna Rada. The normative acts of the Praesidium of the Verkhovna Rada of Ukraine possessed greater force than acts which were subordinate to laws.

Under the new Constitution, only certain decrees of the Praesidium of the Verkhovna Rada of Ukraine, which modified or amended Ukrainian laws, do not require ratification by the Verkhovna Rada of Ukraine. The normative acts of the Praesidium of the Verkhovna Rada of Ukraine must be compatible with the Constitution, ie with the principles and standards which establish human and civil rights and freedoms.Article 124 of the Constitution extends the jurisdiction of the courts to all legal relations that

arise within the state, and assigns responsibility for judicial proceedings to the Constitutional Court of Ukraine and the ordinary courts. The Constitutional Court of Ukraine does not possess any authority in matters concerning the legality of acts of state authorities, authorities of the Autonomous Republic of Crimea and local self- government authorities as well as other matters which fall within the jurisdiction of the ordinary courts (Article 14 of the Law of Ukraine "On the Constitutional Court of Ukraine").

Languages:

Ukrainian, French (translation by the Court).

Identification: UKR-1997-2-001

a) Ukraine / **b)** Constitutional Court / **c)** / **d)** 13/05/1997 / **e)** N 03/29-97 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

2.3.7 **Sources of Constitutional Law** - Techniques of interpretation - Literal interpretation.
4.5.13 **Institutions** - Legislative bodies - Status of members of legislative bodies.
5.2.31 **Fundamental Rights** - Civil and political rights - Non-retrospective effect of law.

Keywords of the alphabetical index:

Member of Parliament, incompatibility / Parliament, members, incompatibility.

Headnotes:

Under Article 58 of the Constitution and Article 2 of the Transitional Provisions of the Constitution, Articles 78.2 and 78.3 of the Constitution and Article 81.4 of the Constitution on the incompatibility of the office of national deputy of Ukraine with other activities do not apply to deputies elected in the period between 27 March 1994 and 8 June 1995 who combined the office of deputy with other activities prior to 8 June 1995, when the restrictions on this plurality of offices were established at constitutional level.

Summary:

The deputies' petition concerns certain provisions of Articles 243- 21, 243-22, 243-25 of the Code of Civil Procedure and Articles 58, 78, 79 and 81 of the Constitution. In accordance with Article 93.1 of the Law "On the Constitutional Court of the Ukraine", the grounds for the proceedings were the uncertainty surrounding the scope of the relevant and the Code of Civil Procedure, with regard to the early termination of the deputies' mandate, according to Article 78 of the Constitution (violation of the requirements concerning the incompatibility of the office of deputy with other types of activity). Hence the practical need for an official interpretation of these articles.

According to Article 78.1 of the Constitution, national deputies of Ukraine exercise their duties on a permanent basis. Article 78.2 of the Constitution establishes the incompatibility of the office of national deputy of Ukraine with other representative mandates or civil service posts. The requirements concerning the incompatibility of the office of deputy with other types of activity must be established by law (Article 78.3 of the Constitution).

In the event of failure to fulfil the requirements concerning the incompatibility of the office of deputy with other types of activity, the powers of the deputy concerned are terminated pre- term, pursuant to the law or a court decision (Article 81.4 of the Constitution).

The appropriate judicial procedure in such cases is laid down in Articles 243-21 and 243-25 of the Code of Civil Procedure.

The interpretation of Articles 78.2, 78.3, 81.3 and 81.4 of the Constitution which is proposed by the deputies is not in keeping with the meaning of the Constitution.Article 78 of the Constitution, which prohibits serving national deputies of Ukraine from engaging in certain other types of activity, does not provide a full list of the activities in question, but mentions merely two types - another representative

mandate or a civil service post. According to this article, only the law can impose restrictions preventing deputies from engaging in other types of activity.

An analysis of the relevant shows that the expression "other types of activity" has different meanings in Article 78.3 and in Article 81.4 of the Constitution.

In Article 81.4 of the Constitution, the term "other types of activity" is understood to mean all activities which do not concern Article 81.2, ie all activities apart from those connected with representative mandates or the civil service.

This interpretation of the expression "other types of activity", as used in Article 81.4 of the Constitution, is borne out by an analysis of Articles 120.1 and 127.2 of the Constitution, which lay down the requirements concerning incompatibility with the office of President of Ukraine, membership of the Cabinet of Ministers and the office of judge.

According to a literal interpretation of the provisions of Article 79 of the Constitution, deputies must swear an oath of allegiance before assuming office, ie before the opening of the first session of the newly-elected Verkhovna Rada, as stipulated in the same article. If, for one reason or another, a Ukrainian deputy is elected after this date, he or she must swear an oath during one of the regular plenary sessions of the Verkhovna Rada during the life of the same parliament.

It is clear that the requirements of Article 79 of the Constitution apply to deputies who were elected after the entry into force of the new Ukrainian Constitution, ie after 28 June 1996.

Neither the Constitution which was in force during the election of the deputies who make up the current Verkhovna Rada, nor the Law "On the status of deputy of Ukraine" which was in force at the time, imposed any restrictions preventing serving deputies from engaging in other types of activity.

Article 58 of the 1996 Constitution lays down one of the most important, universally recognised principles of contemporary law, according to which laws and other normative and legal acts must not be retroactive. This means that they apply only to relations which arise after these laws and other acts have come into force.

The establishment of this principle at constitutional level is a guarantee of stability of public relationships, including those between the State and citizens, because it means that citizens can rest secure in the knowledge that their current situation will not become worse due to the subsequent adoption of a law or other act.

The principle of non-retroactivity is based on the Constitution, which is the fundamental law of the state (see preamble to the Constitution).

Exceptions to this rule are allowed in cases where the laws and other acts reduce or exclude personal liability (Article 58.1 of the Constitution).

The judgment states that, prior to the expiration of the term of the current parliament, the above-mentioned conditions concerning the exercise of powers by deputies elected between 27 March 1994 and 8 June 1995, ie prior to the entry into force of the Constitutional Treaty, who combined the office of deputy with other types of activity, cannot be changed without their consent. The requirements of Article 79 of the Constitution with regard to deputies elected before the Constitution came into force do not have retroactive effect either.

An analysis of Articles 243-21, 243-22 and 243-25 of the Code of Civil Procedure of Ukraine shows that they are clearly and precisely worded, and that there is no need for an official interpretation.

Supplementary information:

Judges M. Savenko and O. Mironenko gave individual concurring opinions.

Languages:

Ukrainian, French (translation by the Court).