



FAIR TRIAL IN UKRAINE: CONSTITUTIONAL REVIEW, EUROPEAN PRACTICE AND MEANS OF ENSURING

*Makar Marchuk**
*Volodymyr Kochyn***

1. INTRODUCTION

This report focuses on some aspects of constitutional review in Ukraine aimed at ensuring the right to a fair trial in Ukraine, including the use of the European Court of Human Rights case law, and the means of ensuring it.

According to the Ukrainian legislation, the Constitutional Court of Ukraine is a body of constitutional jurisdiction, which ensures the supremacy of the Constitution of Ukraine, decides on the conformity of laws of Ukraine to the Constitution of Ukraine and other acts in the cases provided for by the Constitution of Ukraine, provides official interpretation of the Constitution of Ukraine, as well as exercises other powers under the Constitution of Ukraine¹.

The Constitutional Court of Ukraine considers the rule of law, in particular, as a mechanism to ensure control over the use of power by the state, as well as to protect persons from arbitrary actions of state power, which is a guarantee of ensuring basic human values.

Therefore, today the Constitutional Court of Ukraine, as a body of constitutional jurisdiction, through the constitutional review mechanisms defined at the constitutional level, exercises constitutional jurisdiction, forms official constitutional doctrine, provides and develops its legal positions based on the basic values of the Constitution

* Academic Consultant, Patronage Office of a Constitutional Court Judge.

** Academic Consultant, Patronage Office of a Constitutional Court Judge.

1 On the Constitutional Court of Ukraine: Law of Ukraine No. 2136-VIII on July 13, 2017. URL: <https://zakon.rada.gov.ua/laws/show/2136-19#Text> [in Ukrainian].



of Ukraine, the European Convention on Human Rights, and other international treaties ratified by the Parliament of Ukraine (the Verkhovna Rada of Ukraine). **Constitutional review in Ukraine is carried out on the basis of the doctrine of friendly attitude to international law**, according to which the practice of interpretation and implementation of human rights provided in international treaties is applied while adopting decisions by the Constitutional Court of Ukraine.

2. THE USE OF ECHR PRACTICE BY THE CONSTITUTIONAL COURT OF UKRAINE IN THE IMPLEMENTATION OF THE RIGHT TO A FAIR TRIAL

In particular, in **Decision No. 2-пr/2007 on June 12, 2007** in the context of the restriction of human and civil rights and freedoms, the Constitutional Court of Ukraine drew attention to the fact that *“restrictions on human and civil rights and freedoms are recognised as permissible if they are carried out in accordance with applicable law and comply with the rule of preservation of the fundamental essence of rights and freedoms”*² (The judgment of the ECHR in the case of *Rekvényi v. Hungary* of 20 May 1999 was applied³).

Issues related to restrictions on rights and freedoms were considered by the Constitutional Court of Ukraine in the context of the expediency of the imposed restrictions related to the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine (**Decision No. 10-p/2020 on August 28, 2020**). In considering this issue, the Constitutional Court of Ukraine stressed that *„restriction of the constitutional human and civil rights and freedoms is possible in cases specified by the Constitution of Ukraine. Such a restriction may be established only by law – an act adopted by the Verkhovna Rada of Ukraine as the only legislative body in Ukraine. Establishing such a restriction by a bylaw contradicts Articles 1, 3, 6, 8, 19 and 64 of the Constitution of Ukraine”*⁴.

2 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 70 MPs of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of part one of Article 10, paragraph 3 of part two, parts five, six of Article 11, Article 15, part one of Article 17, Article 24, paragraph 3 of Section VI „Final Provisions“ of the Law of Ukraine “On Political Parties in Ukraine” (case on the formation of political parties in Ukraine) No. 2-пr/2007 on June 12, 2007. URL: <https://zakon.rada.gov.ua/laws/show/v002p710-07#Text> [in Ukrainian].

3 The judgment of the ECHR in the case of *Rekvényi v. Hungary* on 20 May, 1999 (Application no. 25390/94) URL: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-58262%22%7D>.

4 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the

The Constitutional Court of Ukraine has repeatedly had to consider issues related to the protection of human and civil rights and freedoms, in particular, by the court (in international practice – the right to a fair trial (protection by an independent and impartial tribunal), access to court).

The Constitutional Court of Ukraine in the **Decision No. 5-пп/2013 on June 26, 2013** took into account the practice of the European Court of Human Rights, which, in particular, in its judgment in the case of *Shmalko v. Ukraine* of July 20, 2004⁵, stated that *«execution of a judgment given by any court must therefore be regarded as an integral part of the „trial“ for the purposes of Article 6»*⁶.

In its **Decision No. 4-p/2019 on June 13, 2019**, the Constitutional Court of Ukraine noted that „the state has the right to establish certain restrictions on the right of persons to access to court; such restrictions must pursue a legitimate aim, not infringe the very essence of that right, and there must be a proportional relationship between that aim and the measures imposed“⁷ (the ECHR judgment in the case of *„Ashingdane v. the United Kingdom“* of 28 May 1985⁸, judgment in the case of *„Krombach v. France“* of 13 February 2001⁹).

Supreme Court regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine „On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2, and the stages of easing anti-epidemic measures“, the provisions of parts one and three of Article 29 of the Law of Ukraine „On the State Budget of Ukraine for 2020“, paragraph nine of clause 2 of section II „Final Provisions“ of the Law of Ukraine «On Amendments to the Law of Ukraine „On the State Budget of Ukraine for 2020“» No. 10-p/2020 on August 28, 2020. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-20#Text> [in Ukrainian].

- 5 The judgment of the ECHR in the case of *Shmalko v. Ukraine* on 20 July 2004 (Application no. 60750/00) URL: <https://hudoc.echr.coe.int/#%22itemid%22:%22001-61926%22>].
- 6 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the National Bank of Ukraine on the official interpretation of the provisions of Article 86, part two of Article 89 of the Constitution of Ukraine, part two of Article 15, part one of Article 16 of the Law of Ukraine „On the Status of People’s Deputies of Ukraine“ (case on the appeal of people’s deputies of Ukraine to the National Bank of Ukraine) No. 5-rp/2003 on March 5, 2003. URL: <https://zakon.rada.gov.ua/laws/show/v005p710-03#Text> [in Ukrainian].
- 7 Decision of the Constitutional Court of Ukraine in the case on the constitutional complaint of Viktor Mykolaiovych Hlushchenko on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of part two of Article 392 of the Criminal Procedure Code of Ukraine No. 4-p/2019 on June 13, 2019. URL: <https://zakon.rada.gov.ua/laws/show/v004p710-19#Text> [in Ukrainian].
- 8 The judgment of the ECHR in the case of *Ashingdane v. the United Kingdom* on 28 May, 1985 (Application no. 8225/78) URL: <https://hudoc.echr.coe.int/#%22fulltext%22:%22Ashingdane%20v.%20the%20United%20Kingdom%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-57425%22>].
- 9 The judgment of the ECHR in the case of *Krombach v. France* on 28 May, 1985 (Application no. 29731/96) URL: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-59211%22>].



1. The Constitutional Court of Ukraine in its **Decision No. 1-pn/2012 on January 18, 2012** emphasized that the defendant's opportunity to inspect the case file for five days is adequate time in this case within the meaning of paragraph 3(b) of Article 6 of the Convention¹⁰ (ECHR judgment in the case „Gavazhuk v. Ukraine“ of 18 February 2010¹¹).

In its **Decision No. 2-p(II)/2023 on March 1, 2023**, the Constitutional Court of Ukraine noted that in the case law of the European Court of Human Rights, one of the components of the broad concept of a fair trial is „the principle of equality of arms – one of the elements of the broader concept of a fair trial – requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent“¹² (judgment in *Nadtochiy v. Ukraine* dated May 15, 2008¹³).

2. We would also like to draw your attention to the **provisions applied by the Constitutional Court of Ukraine to differentiate guarantees of protection of honour, dignity or business reputation of ordinary citizens and officials**. In the reasoning part of **Decision No. 8-pn/2003 on April 10, 2003** (case on the dissemination of information) the Constitutional Court of Ukraine emphasised that „*the limits of admissible information on officials and servants may be wider than the limits of the same information on ordinary citizens. Therefore, if officials act without legal grounds, they must be prepared for critical response from society*“. In view of this, in the operative part of the relevant Decision, the Constitutional Court of Ukraine stated that „...*the statement in*

10 Decision of the Constitutional Court of Ukraine in the case on constitutional petitions of 47 and 50 MPs of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of parts six and seven of Article 218 of the Criminal Procedure Code of Ukraine (case on familiarization of the accused and defense counsel with the criminal case materials) No. 1-pn/2012 on January 18, 2012. URL: <https://zakon.rada.gov.ua/laws/show/v001p710-12#Text> [in Ukrainian].

11 The judgment of the ECHR in the case of *Gavazhuk v. Ukraine* on 18 February, 2010 (Application no. 17650/02) URL: <https://hudoc.echr.coe.int/#%22itemid%22:%22001-97343%22>].

12 Decision of the Constitutional Court of Ukraine (Second Senate) in the case on the constitutional complaint of Pleskach Viacheslav Yuriiyovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of part one of Article 294, part six of Article 383 of the Code of Administrative Procedure of Ukraine (regarding the equality of the parties during judicial control over the execution of a court decision) No. 2-p(II)/2023 on March 1, 2023. URL: <https://zakon.rada.gov.ua/laws/show/v002p710-23#Text> [in Ukrainian].

13 The judgment of the ECHR in the case of *Nadtochiy v. Ukraine* on 15 May, 2008 (Application no. 7460/03) URL: <https://hudoc.echr.coe.int/#%22itemid%22:%22001-86253%22>].



*letters, applications, complaints to the law enforcement body of information cannot be considered as dissemination of information that tarnishes honour, dignity or business reputation or harms the interests of these persons*¹⁴ (ECHR judgments in the cases „Nikula v. Finland“¹⁵, and „Janowski v. Poland“¹⁶).

3. SUBJECT OF CONSTITUTIONAL REVIEW IN CASES ON CONSTITUTIONAL COMPLAINTS: PROBLEMS OF CONSTITUTIONALITY AND APPLICATION OF THE LAW BY THE COURT

Article 55 of the Constitution of Ukraine is formed in such a way that it allows to divide: general principles of judicial protection (part one); guarantees of the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officers (part two); the guarantee of the right to file a constitutional complaint with the Constitutional Court of Ukraine on the grounds established by this Constitution and in the manner prescribed by law (part four).

The peculiarity of the powers of the Constitutional Court of Ukraine to consider a constitutional complaint is to refer to the actual circumstances of the case (legal dispute), and to assess the constitutionality of the relevant legal norm, which was the basis for the resolution of this dispute. Thus, in accordance with Article 151-1 of the Constitution of Ukraine, the Constitutional Court of Ukraine resolves the issue of conformity with the Constitution of Ukraine (constitutionality) of the law of Ukraine upon a constitutional complaint of a person who is convinced that the law of Ukraine applied in the final court decision in his case contradicts the Constitution of Ukraine.

As a result, a regulatory model of a constitutional complaint has been introduced in Ukraine, which is related to the consideration of a specific case in the courts of the judicial system of Ukraine.

14 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of citizen Valeriy Serdyuk on the official interpretation of the provisions of part one of Article 7 of the Civil Code of the Ukrainian SSR (case on dissemination of information) No. 8-пр/2003 on April 10, 2003. URL: <https://zakon.rada.gov.ua/laws/show/v008p710-03/print> [in Ukrainian].

15 The judgment of the ECHR in the case of Nikula v. Finland on 21 March, 2002 (Application no. 31611/96) URL: <https://hudoc.echr.coe.int/#%22itemid%22:%22001-60333%22>

16 The judgment of the ECHR in the case of Janowski v. Poland on 21 January, 1999 (Application no. 25716/94) URL: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-58909%22>



The appeal of individuals with constitutional complaints regarding the laws that were applied in the final court decision in their case, not only implements the possibility of a judicial review of a person's case under exceptional circumstances, in connection with the recognition of the applied provisions of the law as unconstitutional (protection of a person's private interest), but also it can become an effective mechanism on the way to improving the legislation of Ukraine, bringing it into line with constitutional principles and guarantees (ensuring public interest)¹⁷.

The law gives the Court the right to refuse to open a constitutional proceeding by declaring a constitutional complaint inadmissible if the content and requests of the constitutional complaint are clearly unfounded or there is an abuse of the right to file a complaint.

An analysis of the Court's practice regarding assessments of constitutional appeals, in particular so-called '*refusal decisions*', allows us to identify certain criteria of explicit unfoundedness, in particular:

1) statements regarding disagreements in judicial practice, expressing disagreement with court decisions in a case, incorrect application by courts of the norms of substantive law or violations of procedural law, etc.;

2) inadequate legislative regulation or its absence, the need to fill gaps in normative legal acts, inconsistency of legislative acts among themselves (except for cases of legislative omission);

3) assumptions of the subjects of the right to a constitutional complaint;

4) citing the provisions of the Constitution of Ukraine, the content of the provisions of the laws of Ukraine, other normative legal acts, legal positions of the Court and decisions of ECtHR without arguing the inconsistency of the Constitution of Ukraine and the violation of specific constitutional rights by the disputed provisions of the law, in particular, the lack of argumentation as the law itself (its individual provisions) limits or violates a specific constitutional right.

¹⁷ Stavniichuk M. I., Yezerov A. A., Zaporozhets v. I. and others. Constitutional complaint in the activity of a lawyer. Kharkiv: Factor, 2019. P. 19 [in Ukrainian].



During the administration of justice, **the rule of law is an indisputable guideline for the implementation of the proper legal order** in a democratic and legal state. However, to a certain extent, a rhetorical question arises regarding the possibility of avoiding this situation within the framework of judicial proceedings, in particular, civil: *“the court concludes that a law or other legal act contradicts the Constitution of Ukraine, the court does not apply such a law or other legal act, but applies the norms of the Constitution of Ukraine as norms of direct action. In such a case, the court, after passing a decision in the case, turns to the Supreme Court to resolve the issue of submitting to the Constitutional Court of Ukraine a submission on the constitutionality of a law or other legal act, the decision on the constitutionality of which falls under the jurisdiction of the Constitutional Court of Ukraine”* (Part 6 of Article 10 Civil Procedure Code of Ukraine¹⁸).

The mentioned norm enshrines the direct actions of the judge, that is, not in his authority or duty, to apply the provisions of the Constitution of Ukraine, which actually creates the replacement of the body of constitutional jurisdiction and introduces the presumption of illegal law with the use of the appropriate non-procedural (quasi-procedural) method¹⁹.

In this aspect, an important detail should be emphasized: the court applies to the Supreme Court after passing the decision, that is, without applying in accordance with Article 150 of the Constitution of Ukraine (1) a law or other legal act of the Verkhovna Rada of Ukraine; (2) an act of the President of Ukraine; (3) a legal act of the Verkhovna Rada of the Autonomous Republic of Crimea; and exclusively the Constitution of Ukraine. That is to say, returning to the provisions of Part 2 of Article 10 of the Civil Procedure Code of Ukraine, we emphasize the construction: *“the court hears cases in accordance with the Constitution of Ukraine, international treaties, the consent to the bindingness of which has been given by the Verkhovna Rada of Ukraine”*.

The doctrine contains many different approaches to the formation

18 Civil Procedure Code of Ukraine. Law No. 1618-IV on March 18, 2004. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> [in Ukrainian].

19 Berestova I. E. Theoretical principles of protection of public interests in civil proceedings and constitutional proceedings: monograph. Kyiv: FOP Maslavkov, 2018. P. 69–70 [in Ukrainian].



of the concept “law that cannot be applied by the courts for being contrary to the Constitution”: from the absolute nullity of the law to the exclusive contestability of its individual provisions by the subject of private law when applying the law within the context of ensuring the common good (public interest); the statement (conclusion) of the court in the judicial decision that the law contradicts the Constitution according to the current procedural legislation actually turns the law into a contested one, and therefore it is not applied only if this is substantiated by the party to the dispute and the judge takes into account the position of the party, since its arguments and motives of the court (that are based on the internal conviction of the court) coincide; or the court independently reaches the above stated conclusion²⁰.

Please note that if the Constitutional Court of Ukraine, considering a case based on a constitutional complaint, recognized the law of Ukraine (its provisions) as being in accordance with the Constitution of Ukraine, but at the same time found that the court applied the law of Ukraine (its provisions), interpreting it in a way that did not corresponds to the Constitution of Ukraine, the Constitutional Court indicates this in the operative part of the decision (Part three of Article 89 of the Law of Ukraine “On the Constitutional Court”).

4. INTERACTION OF CONSTITUTIONAL JURISDICTION AND JUSTICE

The principle of separation of powers, in addition to its influence on the establishment and development of a democratic and legal society, allows the mechanism of legal regulation to function properly at its final stage.

First, let’s turn to the institutional guarantees of the judicial power, which ensures justice. Thus, the Constitutional Court of Ukraine used the conclusions of the European Commission for Democracy through Law (Venice Commission) and approved the position that during the adoption of a new constitution, its transitional provisions should not be

²⁰ Rybachuk A. I. Application by courts of the norms of the Constitution of Ukraine as norms of direct effect (based on the practice of courts of administrative, economic and civil jurisdictions). Diss. Ph.D. ... 081 – Law. Kyiv: Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Sciences of Ukraine, 2022. P. 214–215 [in Ukrainian].



used as a way to terminate the powers of the persons elected or appointed under the previously valid constitution; dismissal of all judges, except in exceptional cases, such as violation of the constitutional duty, does not meet European standards and the principle of the rule of law; it is impossible to replace all judges without harming the continuity of the administration of justice (para 3 of **Decision No. 2-p/2020 on February 18, 2020**²¹).

By its legal nature, the highest instance of the judicial branch of power must ensure the unity and stability of the judicial practice of all courts that are part of the judicial system of Ukraine, and therefore its constitutional status consists in the continuity of the exercise of powers since the adoption of the Basic Law of Ukraine.

That is why, the Law of Ukraine “on the Liquidation of the District Administrative Court of the City of Kyiv and the Formation of the Kyiv City District Administrative Court” No. 2825-IX on December 13, 2022 established that before the Kyiv City District Administrative Court (newly established court) begins its work, cases subject to the District Administrative Court, the territorial jurisdiction of which extends to the city of Kyiv, are considered and decided by the Kyiv District Administrative Court (the existing court) (subpar three, para 2 of Section II “Final and Transitional Provisions”²²).

Secondly, justice must be guaranteed by the stability of the legal status of the judge. According to the legal position of the Constitutional Court of Ukraine:

- the Basic Law of Ukraine *establishes an exhaustive list of grounds for dismissing a judge from office*, which makes it impossible to expand or narrow this list by law (the first sentence of the third subparagraph of paragraph 3.1 of point 3 of the motivational part of the **Decision No.**

21 The decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of the Supreme Court of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of clauses 4, 7, 8, 9, 11, 13, 14, 17, 20, 22, 23, 25 of Chapter XII „Final and transitional provisions“ of the Law of Ukraine „On the Judiciary and the Status of Judges“ on June 2, 2016 No. 1402-VIII No. 2-p/2020 on February 18, 2020. URL: <https://ccu.gov.ua/docs/3033> [in Ukrainian].

22 On the Liquidation of the District Administrative Court of the City of Kyiv and the Formation of the Kyiv City District Administrative Court. Law of Ukraine No. 2825-IX on December 13, 2022. URL: <https://zakon.rada.gov.ua/laws/show/2825-IX#Text> [in Ukrainian].



10-пп /2013 on November 19, 2013²³).

*- reduction in the level of guarantees of the independence of judges contradicts the constitutional requirement of unwavering provision of independent justice and the right of citizens to the protection of rights and freedoms by an independent court, as it leads to a limitation of the possibilities of realizing this constitutional right, and therefore, contradicts Article 55 of the Constitution of Ukraine (the second sentence of the paragraph of the second clause of the 3rd part of the motivational part of the **Decision No. 3-пп/2013 on June 3, 2013²⁴**).*

- one of the constitutional guarantees of the independence of judges is a special procedure for court financing; the established system of guarantees of independence of judges is not a personal privilege; the constitutional status of a judge provides for sufficient financial support for a judge both during the exercise of his powers (judicial remuneration) and in the future in connection with reaching the retirement age (pension) or as a result of the termination of powers and the acquisition of the status of a retired judge (monthly lifelong monetary maintenance); guarantees of the independence of judges are an integral element of their status, apply to all judges of Ukraine and are a necessary condition for the administration of justice by an impartial, impartial and fair court; the judge's remuneration is a guarantee of a judge's independence and an integral component of his status; a reduction by the legislative authority in the amount of the official salary of a judge leads to a decrease in the amount of the judge's remuneration, which, in turn, is an encroachment on the guarantee of the independence of the judge in the form of material support and a prerequisite for influencing both the judge and the judiciary as

23 The decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of the Supreme Court of Ukraine regarding the conformity of the Constitution of Ukraine (constitutionality) with Articles 103, 109, 131, 132, 135, 136, 137, subparagraph 1 of clause 2 of Chapter XII „Final provisions”, paragraph four of clause 3, paragraph of the fourth item 5 of Chapter XIII „Transitional Provisions” of the Law of Ukraine „On the Judiciary and the Status of Judges” No. 10-пп/2013 on November 19, 2013. URL: <https://ccu.gov.ua/docs/667> [in Ukrainian].

24 The decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 2, Paragraph Two of Clause 2 of Section II „Final and Transitional Provisions” of the Law of Ukraine „On Measures for Legislative Support of Reforming the Pension System”, Article 138 of the Law of Ukraine „On the Judiciary and the Status of Judges” (case concerning changes in the terms of payment of pensions and monthly life support of retired judges) No. 3-пп/2013 on June 3, 2013. URL: <https://ccu.gov.ua/docs/660> [in Ukrainian].



a whole (the first sentence of the third paragraph of paragraph 2 of the motivational part of the **Decision No. 6-пп/99 on June 24, 1999**²⁵, the first sentence of the paragraph of the sixth subparagraph 2.2 of paragraph 2 of the motivational part of the **Decision No. 3-пп/2013 on June 3, 2013**²⁶, the second sentence of the paragraph of the sixth subparagraph 3.2, paragraphs twenty-seven, thirty-third, thirty-fourth sub-item 3.3 of item 3 of the motivational part of the **Decision No. 11-p/2018 on December 4, 2018**²⁷).

5. CONCLUSION

Thus, in exercising constitutional review, the Constitutional Court of Ukraine uses the legislatively established mechanisms for its implementation, in particular, the requirements of the normative model of a constitutional complaint. Recognition of laws or their individual provisions as unconstitutional on the basis of constitutional complaints provides for further review of a person's case in exceptional circumstances. A person needs to clearly argue the inconsistency of the disputed provisions, for which the constitutional complaints themselves cite the positions of the European Court of Human Rights (as a source of law), as well as the Venice Commission and other international institutions whose activities are aimed at resolving related issues (as a soft law). Subsequently, the Constitutional Court of Ukraine assesses the relevant arguments and conclusions provided by state bodies and academic organizations and sets them out in its

25 The decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 19, 42 of the Law of Ukraine „On the State Budget of Ukraine for 1999“ (case on court funding) No. 6-пп/99 on June 24, 1999 URL: <https://ccu.gov.ua/docs/402> [in Ukrainian].

26 The decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 2, Paragraph Two of Clause 2 of Section II „Final and Transitional Provisions“ of the Law of Ukraine „On Measures for Legislative Support of Reforming the Pension System“, Article 138 of the Law of Ukraine „On the Judiciary and the Status of Judges“ (case concerning changes in the terms of payment of pensions and monthly life support of retired judges) No. 3-пп/2013 on June 3, 2013. URL: <https://ccu.gov.ua/docs/660> [in Ukrainian].

27 The decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of the provisions of parts three and ten of Article 133 of the Law of Ukraine „On the Judicial System and the Status of Judges“ as amended by the Law of Ukraine „On Ensuring the Right to a Fair Trial“ No. 11-p/2018 on December 4, 2018. URL: <https://ccu.gov.ua/docs/2453> [in Ukrainian].



legal positions. The rule of law is an indisputable guideline for courts during solving cases. Constitutional complain is not the next instance or stage in the trial. The Fair Trial in Ukraine ensures by the institutional guarantees of judicial power and judge's status stability. Despite these fundamental provisions, the practice of the courts may be erroneous, but such 'illegal activity' (according to complainer's opinions) is not subject to constitutional review.

Summarizing the above, we state that the only body of constitutional jurisdiction in Ukraine, in order to protect the constitutional rights and freedoms of humans and citizens, has been quite active in using international experience in matters of the greatest public interest and which are fundamental for further work towards the protection of human values. There are such positions in which the relevant developments were applied: the protection of human rights and freedoms by the court; the right to liberty and personal integrity; freedom of own views and beliefs expression; the protection of private property rights; the limits on the application of restrictions on rights etc. The further application of this practice as an additional argument in the decisions of the Constitutional Court of Ukraine will only contribute to the consolidation of its legal positions with the views of the international community.