CONSTITUTIONAL COURT OF UKRAINE
National Report

The 4th Congress of the World Conference of Constitutional Justice ("The Rule of Law and Constitutional Justice in the Modern World")

A. The rule of law and constitutional justice in the modern world

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.), which establish the principle of the rule of law in the legal system of your country?

The effect and recognition of the principle of the rule of law in Ukraine are envisaged in Article 8.1 of the Constitution of Ukraine.

The principle of the rule of law is also mentioned in numerous acts of domestic legislation; the legislator puts it into the basis of the implementation of domestic policy in general and its individual aspects (such as the implementation of the state policy in the field of provision of free legal aid[1]); it is considered essential in different areas of legal regulation, for example, administration of justice, constitutional justice, advocacy; activities of local state administrations; Central Election Commission; operative investigation activities; government cleansing (lustration)[2] and others.

Yet, the content of the principle of the rule of law is not developed in the Constitution of Ukraine and laws.

Some attempts to determine its content were provided in some domestic procedural codes, whereby according to the principle of the rule of law an individual, his/her rights and freedoms are recognised as the highest values and they determine the content and direction of the state activities[3], herewith application of the principle of the rule of law is envisaged with account of the case-law of the European Court of Human Rights. There are similar definitions in some modern laws[4]. In practice, norms of laws reflect the provisions of Articles 3.2, 3.3 of the Constitution of Ukraine, but the latter declares the rights and freedoms as the highest social value.

In some laws the content of the principle of the rule of law is developed through its specific components (such as legality and legal certainty[5]).

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[1] See: Laws of Ukraine "On the principles of domestic and foreign policy" (Article 2); "On free legal aid" (Article 5.1.1).

[2] See: Laws of Ukraine "On the Judicial System and Status of Judges" (Articles 2.1, 6); "On the Constitutional Court of Ukraine" (Article 4); "On Advocacy and Advocacy Activities" (Article 4.1); "On Local State Administrations" (Article 3); "On the Central Election Commission" (Article 3); "On operative investigation activity" (Article 4); "On government cleansing" (Article 1).

[3] See: Code of Administrative Proceedings of Ukraine (Article 8.1); Code of Criminal Procedure of Ukraine (Article 8.1).

[4] The Law of Ukraine "On the National Police" (Article 6).

[5] The Law of Ukraine "On Administrative Services" (Article 4.1.1).

International legal acts which are effective in Ukraine also do not provide for comprehensive understanding of the principle of the rule of law. Some of them contain a reference to this principle, the others define its individual aspects (for example, the rule of law should provide fair, impartial and independent judicial proceedings[6]).

This situation is not accidental, as no one can provide a comprehensive definition of this universal legal value that would fit all situations. The case-law of the European Court of Human Rights, which emphasised the need for meaningful interpretation of the concept of rule of law, according to the situation testifies to it[7]. However, it is common both in legal theory as well as in international practice to consider this notion through certain components, the list of which is not exhaustive[8]. It seems therefore logical that an essential place in determining the content of the principle of the rule of law should belong not to the legislator but to the courts, which in each situation define its legal aspects and adopt practical decisions at the appropriate basis.

Domestic courts have explained the content of this principle, for example, through the need to implement guarantees for judicial independence and integrity of judges[9]; through observance of the principle of legal certainty[10].

Yet a key role in filling the content of the principle of the rule of law is played by the Constitutional Court of Ukraine, which has been applying it almost from the beginning of its establishment. Moreover, it tried to define the principle of the rule of law at the conceptual level in one of its decisions, having declared it one of the basic principles of a democratic society and formulated it as a supremacy of law in society, stressing that it requires that the state implements it in law-making and law enforcement activities, in particular, in a laws which by their purpose have to be permeated, first and foremost, by the ideas of social justice, freedom, equality and so on. According to the Constitutional Court of Ukraine, one of manifestations of the rule of law is that law is not restricted to legislation only as one of its forms, but rather comprises other social regulatory means such as ethical norms, traditions, customs etc. legitimised by society and caused by a historically achieved cultural level of its development[11].

The jurisprudence of the Constitutional Court of Ukraine regarding the content of the principle of the rule of law is described in reply to question 4 of the same section of the questionnaire.

Thus, the principle of the rule of law can be considered not only as doctrinal fundamental, but also as the practical basis of modern legal system of Ukraine, laid down, in particular, by the efforts of the Constitutional Court of Ukraine, which plays

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[6] See: European Convention on Human Rights of November 4, 1950; European Parliament Resolution "On the current situation in Ukraine" dated 25 October 2011.

[7] General Theory of Law: Textbook/edited by M. Koziubra. - K.: Vaite, 2016. - pp. 359-361.

[8] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-rus

[9] Decision of the Supreme Court of Ukraine "On the judicial independence" dated June 13, 2007 №8 http://zakon4.rada.gov.ua/laws/show/v0008700-07

[10] Decision of the Supreme Court of Ukraine "On invalidation and cancellation of tax notices" dated December 2, 2014 № 21-532a14.

[11] Item 4.1 of the reasoning part of the Decision of the Constitutional Court of Ukraine dated November 2, 2004 № 15-rp/2004 (the case on more lenient penalty).

a leading role in asserting and creative development of the content of this principle today. However, a realistic view of things shows that in the practice of legal regulation of social life of Ukraine the principle of the rule of law is applied in a contradictory manner; to become vital it will take much time to reform key institutions of the legal system (primarily the system of courts of general jurisdiction).

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

There is no generally accepted approach to understanding of the principle of "rule of law" in academic community of Ukraine. Summary of the views of those who researched this issue allow to single out six basic approaches[12]:

1) identification of the rule of law with the supremacy of statute laws in its narrow sense;

2) understanding of the rule of law as the supremacy of statute laws in the broad sense, i.e. as supremacy of all normative legal acts;

3) identification of the rule of law with the supremacy of reason and justice;

4) priority of generally recognised principles and norms of international law over national legislation;

5) identification of the rule of law with the supremacy of the constitution;

6) identification of the rule of law with fundamental human rights.

Thus, the range of opinions existing in Ukraine is extremely wide - from identification of the rule of law with the supremacy of statue law to understanding of the rule of law as purely the rule of reason and justice. In reply to question 5 of this section of the questionnaire, leading legal ideas are provided by which representatives of specific approaches are guided.

The latitude of the specified range is narrowed and to some extent regulated by the legal positions of the Constitutional Court of Ukraine, first of all, expressed in the Decision № 15-rp/2004 dated November 2, 2004 in the case on more lenient penalty: "The rule of law implies the supremacy of statute law in society. The rule of law implies that the state implements it in law-making and law enforcement activities, in particular, in laws which by its content have to be permeated by the ideas of social justice, freedom and equality. One of the manifestations of the rule of law is that law is not restricted to legislation only as one of its forms, but rather comprises other social regulatory means such as ethical norms, traditions and customs legitimised by society and caused by a historically achieved cultural level of its development. All these elements are of law are united by quality consistent with the ideology of justice and the idea of law largely reflected in the Constitution of Ukraine. This interpretation of law by no means justifies identifying it with legislation. The latter may well be unjust, for example, by restricting freedom and equality of an

[12] S. Seriohin. The rule of law in Ukraine: problems of understanding and application. Monograph. - Dnipropetrovsk: Seredniak TK, 2014.

individual". In other decisions the Court develops and specifies the content of the rule of law (see reply to question 4 of this section of the questionnaire).

Such understanding of the rule of law by the Court (distinction between "law" and "statute") gives reason to state that the material (substantive, essential) concept of the rule of law[13], not a formal one is typical for Ukraine.

Numerous achievements of national experts on the rule of law enable individual researchers to speak about two major conceptual and methodological approaches to definition of the above principle in Ukraine: a) "element by element approach" and b) "integrated one"[14].

"Element by element" approach to the interpretation of the rule of law is characterised by attempts to examine the aforementioned phenomenon by combining the definitions of each of the two separate notions: "law" and "rule". Given this, it is proposed to classify the concepts of the rule of law, which are built on the principles of "element by element" approach, into the following four groups:

- Natural law concepts based on the distinction between law, namely human rights and statutes (in the broad sense of the latter);

- Legist and positivist concepts which identify the rule of law with the supremacy of statute laws;

- Sociologically positivist concepts based on sociological legal understanding, i.e. interpretation of law organically related to certain social phenomena (first and foremost, certain social relations);

- Complex (mixed) concepts characterised by attempts to combine elements of the concepts of the previous types. The author includes the above-mentioned position of the Constitutional Court to this approach.

The essence of the "integrated" approach implies the denial of the opportunity to provide the definition of the general concept of the rule of law and the definition of the content of the rule of law only through the reference to its "components" (aspects, requirements, features, implications, and features).

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

The task of the Constitutional Court of Ukraine is to guarantee the supremacy of the Constitution of Ukraine as the Fundamental Law of the state throughout the territory of Ukraine; the basic principles of its activity include the rule of law (Article 147 of the Constitution of Ukraine, Articles 2 and 4 of the Law on the Constitutional Court of Ukraine). In implementing its constitutional powers, the Court is also guided

[13] The most concise and clear distinction between formal and material concepts of the rule of law can be represented in the following way. The formal theory of the rule of law, the basic idea (as defined by Austrian scholar Friedrich von Hayek): Government must follow the rules established and proclaimed beforehand - rules which allow safe to predict how the government will use its powers of coercion in certain circumstances and to plan their own affairs based on this knowledge. Hayek distinguishes three aspects of the rule of law: laws must be shared, equally applicable to all and clearly defined. Material theories of the rule of law are more complex concepts. They include formal requirements of legality, but do not stop at this and develop evaluation criteria for the content of laws. They duly take into account the values of human dignity and personal autonomy, in particular individual rights.

[14] P. Rabinovich. Rule of Law: doctrinal interpretation in Ukraine / P.Rabinovych // Law of Ukraine. - 2013. - №: 9.- pp. 162-175.

by Article 8 of the Constitution of Ukraine, which establishes that in Ukraine the principle of the rule of law is recognised and effective. Thus, resolving the current legal issues of various social and political focus and importance, one can say that the Court ensures implementation of the rule of law in any area of law to which relevant problem is related; the jurisdiction of the Court is not limited by certain (specific) areas of law. This said, one should point out two reservations: 1) such provision is made within the Court's understanding of the meaning of "the rule of law" that is being gradually developing; 2) one can speak about this provision provided the decision (opinion) of the Constitutional Court has been executed.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

Academic debates demonstrate a significant number of approaches to understanding of the rule of law and the definition of its components, while the practical rules seek clearer, unified vision of it.

Domestic constitutional jurisprudence includes the principles of fairness, integrity, intelligence, legal certainty, proportionality, limitation of discretion to the components of the rule of law. At the same time, it contains both formulation of a common vision, meanings for their understanding and explanation of their application in specific situations. The Constitutional Court of Ukraine also mentions other principles which in the theory of law are considered to be components of the principle of the rule of law (respect for human rights and freedoms, supremacy of the constitution, equality, separation of powers, legality, independence of courts and judges). They are not directly determined by the Court as elements of the principle of the rule of law, but they are often applied in the appropriate context. Apart from the cases of application of these elements of the rule of law along with the principle of the rule of law as it is[15], the Court often applies them in conjunction. For example, the principles of separation of powers and legality are commonly applied by the Constitutional Court of Ukraine together in solving disputes on the competence of the bodies of state power[16]; the principles of equality and proportionality are often combined[17].

[15] Decisions of the Constitutional Court of Ukraine dated April 1, 2008 № 4-rp/2008 (the case on the Rules of Procedure of the Verkhovna Rada of Ukraine) (items 4.1, 4.2 of the reasoning part); dated January 25, 2009 № 5-rp / 2009 (item 2.4 of the reasoning part); dated June 21, 2011 № 7-rp/2011 (the case on the powers of state bodies in the sphere of judiciary) (item 3 of the reasoning part); dated September 30, 2010 № 20-rp/2010 (the case on the observance of the procedure for amending the Constitution of Ukraine).

[16] Decisions of the Constitutional Court of Ukraine dated July 11, 1997 № 3-rp/1997 (the case on the constitutionality of the interpretation by Verkhovna Rada of Ukraine of Article 98 of the Constitution of Ukraine) (item 1 of the reasoning part); dated February 10, 2000 № 2-rp/2000 (the case on prices and tariffs for housing and other services) (item 2 of the reasoning part); dated May 7, 2002 № 8-rp/2002 (the case on jurisdiction acts on appointment or dismissal of officials) (item 3 of the reasoning part); dated December 11, 2007 № 12-rp/2007 (the case on the order of termination of powers of the Cabinet of Ministers of Ukraine) (item 5 of the reasoning part).

[17] Item 3.5 of the reasoning part of the Decision of the Constitutional Court of Ukraine dated February 16, 2010 № 5-rp/2010.

The Constitutional Court of Ukraine in its very first decisions expressed the positions regarding the key elements of the principle of the rule of law - respect for human rights and freedoms, supremacy of the Constitution of Ukraine, separation of powers, equality before the law, proportionality, legal certainty etc. In particular, the Constitutional Court of Ukraine in the Decision dated December 29, 1999 № 11-rp/99 (the case on the death penalty) stated on inalienability and inviolability of the right to life as an inalienable right of every person; the Constitutional Court of Ukraine in the Decisions dated July 1, 1998 № 9-rp/98 (the case on privatisation of state property) and October 10, 2001 № 13-rp/2001 (the case on savings of citizens) stressed on the equality of all subjects of property rights before the law; the Constitutional Court of Ukraine emphasised the highest legal force of the Constitution of Ukraine and the direct effect of its rules in the Decision dated March 27, 2000 №3-rp/2000 (the case on a national referendum upon popular initiative).

As it was noted above, an attempt to determine the principle of the rule of law at the conceptual level was made in the Decision of the Constitutional Court of Ukraine dated November 2, 2004 № 15-rp / 2004 (the case on more lenient penalty).

In this decision the Court also explained the concept of justice[18]: "Justice is one fundamentals of the law and is a crucial element in determining its role as social relations regulator, one of the general human dimensions of law. As a rule, justice is often seen as a property of law, which, for example, is reflected in equal legal scale and proportionality of legal responsibility to the gravity of offence.

In the sphere of implementation of law, justice is particularly reflected in equality of all individuals before the law, conformity of the offence to punishment, the legislator's purpose and the means chosen to achieve that purpose.

A separate manifestation of justice is the conformity of offence and punishment; the category of justice requires that the punishment for an offence should be commensurate with that offence. A just application of the norms of law implies first and foremost absence of discrimination and impartiality" (item 4.1 of the reasoning part).

The Court applied the notion of justice in many further decisions. For example, it pointed out that the elements of the law (in particular, proportionality, equality, morality) are combined by the quality that meets the ideology of justice, the idea of law, which was largely reflected in the Constitution of Ukraine[19]; that the category of legally protected interest is protected not only by the law but also by objective law in general that prevails in society, including justice, since interest in the narrow sense is predetermined by the general content of such law and is its element[20]; that failure to execute a court decision threatens the essence of the right to a fair trial[21] etc.

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[18] Justice as a crucial element of administering justice was previously mentioned in the Decision of the Constitutional Court of Ukraine dated January 30, 2003 № 3-rp/2003 (the case on consideration by the court of individual resolutions of investigator and prosecutor). The Court then noted that "justice is inherently acknowledged only if it meets the requirements of justice and provides effective renovation in rights" (item 9.10 of the reasoning part).

[19] Item 4.3.4 of the reasoning part of the Constitutional Court of Ukraine dated March 24, 2005 № 2-rp/2005 (the case on a tax lien).

[20] Item 3.4.1 of the reasoning part of the Constitutional Court of Ukraine dated December 1, 2004 № 18-rp/2004 (the case on interest protected by law).

[21] Item 3 of the reasoning part of the Constitutional Court of Ukraine dated April 25, 2012 № 11-rp/2012 in the case upon the constitutional appeal of citizen Oleksii Leonidovych Shapovalov concerning official interpretation of the

In assessing the lawfulness of human rights restriction by the rules of laws challenged for their compliance with the Constitution of Ukraine or through relevant interpretation of these rules, the Constitutional Court of Ukraine has repeatedly referred to the principle of proportionality as a component of the rule of law. For example, in the Decision dated June 20, 2007 № 5-rp/2007 (the case on creditors of enterprises of municipal ownership) the Court stated that in order to determine the proportionality of the restriction of the rights of creditors of enterprises of municipal ownership for a fair trial it is necessary to take into account the purpose of the institute of municipal ownership and real social need in the functioning of economic entities, based on this form of ownership (item 3.4.1 of the reasoning part). The In the Decision dated October 19, 2009 №26-rp/2009 (the case on introducing amendments to some legislative acts of Ukraine on elections of the President of Ukraine) the Court stated that the establishment of restrictions on human and citizen's rights and freedoms is admissible only on condition that such a restriction is balanced (proportional) and socially necessary (item 3.3.6 of the reasoning part). In the Decision dated June 1, 2016 № 2-rp/2016 (the case on judicial control over hospitalisation of disabled persons to psychiatric institution) the Court noted that such hospitalisation by its nature and consequences is a disproportionate restriction of the constitutional right of incapable persons to freedom and personal inviolability, therefore it should be carried out in compliance with the constitutional guarantees of the protection of human and citizens' rights and freedoms, with account of the mentioned international legal standards, legal positions of the Constitutional Court and exclusively upon the court's decision pursuant to Article 55 of the Fundamental Law (item 2.5.3 of the reasoning part).

In a number of its decisions, the Constitutional Court of Ukraine has interpreted such an important element of the principle of the rule of law as the principle of legal certainty. For instance, in the Decision dated September 22, 2005 № 5-rp/2005 (the case on permanent use of land plots) the Court stated that the constitutional principles of equality and justice entails the requirement of certainty, clarity and inambiguity of a legal norm as nothing else may ensure its uniform application, precludes unboundedness of interpretation in enforcement practice and inevitably leads to arbitrariness (item 5.4.2 of the reasoning part).

In the Decision dated October 11, 2005 № 8-rp/2005 (the case on the pension level and lifetime monthly monetary allowance) the principle of legal certainty was specified, and the requirement of predictability of legislative policy in the sphere of pension provision, which allows participants to pension legal relationships predict the consequences of their actions and be sure of their legitimate expectation that their acquired right on the basis of current legislation, its content and scope will be implemented and not be cancelled or restricted was declared its manifestation (item 4 of the reasoning part).

In the Decision dated 29 June 2010 № 17-rp/2010 in the case upon the constitutional petition of the Authorised Human Rights Representative of the

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provisions of Articles 106.1.20, 111-13.1 of the Commercial Procedural Code of Ukraine in conjunction with the provisions of Articles 129.3.2, 129.3.8 of the Constitution of Ukraine.

Verkhovna Rada of Ukraine on conformity with the Constitution of Ukraine (constitutionality) of paragraph 8 of Article 11.1.5 of the Law of Ukraine "On Militia" the Court pointed to the legal certainty as an element of the rule of law, which provides that "restriction of the fundamental human and citizen's rights and implementation of these restrictions are acceptable only on condition of ensuring predictability of application of the legal norms established by these restrictions. In other words, restriction of any right should be based on the criteria which would provide a person the possibility to distinguish lawful behaviour from unlawful one, and to foresee legal consequences of his/her behaviour" (item 3.1.3 of the reasoning part).

The legal certainty of laws and other normative acts and predictability of legislative policy related thereto are mentioned in the Decisions dated October 11, 2011 № 10-rp/2011 (the case on terms of the administrative arrest)[22], June 8, 2016 № 3-rp/2016 (the case on the termination of payment of childbirth allowance)[23] and others.

A number of decisions of the Constitutional Court of Ukraine refer to the principle of independence of courts and judges, economic independence inclusive. Foe example, in the Decision dated June 24, 1999 № 6-rp/99 (the case on maintenance of judicial institutions) the Court indicated that funding of the judicial institutions, which should ensure appropriate economic conditions for full and independent administration of justice, should limit any impact on the court and be directed to guarantee judicial activities based on the principles and regulations of the Constitution of Ukraine (item 2.3 of the reasoning part). In the case upon the constitutional petition of 54 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On the Judicial System and Status of Judges" the Court noted that the Constitution of Ukraine guarantees the independence of judges (item 3.2 of the reasoning part of the Decision dated July 12, 2011 № 8-rp/2011); in the Decision dated June 8, 2016, № 4-rp/2016 (the case on lifelong monthly monetary allowance of retired judges) the Court stated that the constitutional principle of judicial independence ensures the important role of the judiciary in the mechanism of human and citizen's rights and freedoms protection and is the key to implementation of the right to judicial protection, envisaged by Article 55.1 of the Constitution of Ukraine (item 2.2.3 of the reasoning part).

Given the principle of the rule of law, the Constitutional Court of Ukraine in the Decision dated June 3, 2013 № 3-rp/2013 (the case on changing conditions of pension payment and lifelong monthly monetary allowance of retired judges) noted that the legislator, having appropriate discretion, may not introduce regulation, under which a person while implementing one constitutional right, is deprived of the opportunity to implement another right (guarantee) (item 6.2.3 of the reasoning part). In the case on the termination of payment of childbirth allowance the Constitutional Court of Ukraine noted that the discretionary powers of a public authority to

[22] Items 4.2-3, 4.1.5 of the reasoning part of the Decision.
[23] Items 2.4.2, 2.4.3, 2.4.5 of the reasoning part of the Decision.

terminate such payment should be clearly defined in a relevant law (item 2.2.5 of the reasoning part of the Decision dated 8 June 2016 № 3-rp/2016).

5. Has the concept of the rule of law changed over time in your country? If so, please describe these changes referring to examples.

Attempts to provide general theoretical explanation of the content of the principle of the rule of law were made in the domestic legal science immediately after the adoption of the Constitution of Ukraine in 1996, Article 8.1 of which envisages that "In Ukraine, the principle of the rule of law is recognised and effective."

The interpretation of the principle of the rule of law by the Constitutional Court of Ukraine is reflected in the reply to the previous question, therefore, below only information about the development of Ukrainian academic opinion on the matter is provided.

It was traditional for the post-Soviet legal theory and practice (dogmatic domestic science, caused by its great adherence to legal positivism) to identify the principle of the rule of law with the supremacy of statute law or the supremacy of all normative acts.

In the first 2-3 years after the adoption of the Constitution of Ukraine, Ukrainian researchers expressed, in particular, the following opinions[24].

M.Orzykh (1997) understands the principle of the rule of law as "the principle of the supremacy of the legal law over all other normative legal and law enforcement regulations of the state."

Ye.Nazarenko (1997) believes that "legal laws" are only those laws which "implement the rule of law." She defines the concept of "rule of law" as "the main principle of the activity of the bodies and officials of the state." The author considers that the Constitution of Ukraine does not oppose "the rule of law" to "the supremacy of statute law", that "the rule of law" is implemented through the Constitution and laws of Ukraine, the "the rule of law" imposes the basic requirement to the laws - "to fix only those norms and rules of behaviour that determine a person as the highest value of society, i.e. legitimise the principles of humanism and justice in the relations between people as well as between person and the state."

P.Rabinovych (1997) determines the principle of "the rule of law" as "subordination of the state and its institutions to human rights, recognition of priority of law over other social norms (morality, customs, etc.)." Acknowledging the fact that the principle of the rule of law is not identical to that of the supremacy of statute law, the author notes that the basis of the difference between them is "the difference in understanding law and statute", and, according to the author, "the principle of the rule of law is more specific," and "the supremacy of statute law means first and foremost the supremacy of a legal law, because not every law is such." The author believes that the concept of "the rule of law" acquires "self-importance" only when the term "law" is understood as "a phenomenon that arises and exists independently

[24] S. Holovatyi.: "Rule of Law" as understood by the Ukrainian scholars / S. Holovatyi // Ukrainian law. - 2002. - №: 1 (15). – pp. 8-28.

from the state, from its legislative and other bodies." He believes that in such case the rule of law is manifested in the following:

- "Consolidation of fundamental human rights in the constitutional and other laws";
- "Domination in society and public life of the laws, which express the will of the majority or the entire population";
- "Regulation of relations between the individual and the state based on ... the principle that "a person is allowed to do everything that is not expressly prohibited by law";
- "Mutual responsibility of the individual and state."

These elements of "the rule of law" are, in his opinion, "in fact, the essential features of the law-based state", which Ukraine proclaimed itself.

V.Pohorilko (1998) names this principle "of the priority in a law-based state" and one that "reflects the place and role of law in the state and society." The content of this principle, according to the author, is that it implies "correlation between law and the state," "correlation between law and politics", "correlation between law and economics", "correlation between law and ideology", "correlation between law and other social norms (morals, customs, etc.). The author says that this "correlation" is in "the priority of law" over "state," "politics," "economy," "ideology," "ethics," "customs." The author states that "the principle of the rule of law" is often called the principle of the supremacy of statute law." He considers it to be a "reasonable" approach, whereby the concept of "statute law" has the same meaning as the concept of "law", that is, when the term "statute law" implies "any normative legal act."

A.Zaiets (1999) points, in particular, to the relationship between the concepts of "law-based state" and the principle of the rule of law where the principle of the rule of law "is a part of the characteristics of a law-based state in terms of the nature of law as the embodiment of popular sovereignty." He believes that this principle is specified through a number of "other elements", including:

- "Minimal sufficiency of legal regulation of social relations and universality of law";
- "Impartiality of law, its relative independence as to political parties and deideologisation";
- "Relative autonomy of law regarding judicial and executive power";
- "Supremacy of the Constitution and laws of Ukraine."

S.Shevchuk (1998)[25] believes that the principle of the rule of statute law in its generally recognised meaning is a formal characteristic of the principle of the rule of law. But the principle of the rule of law has a different, "organic" characteristic and meaning, which, unfortunately, is not yet recognised in Ukrainian academic community.

As of 2000 there are four basic approaches to the understanding of the principle of the rule of law in Ukraine[26]:

[25] S. Shevchuk. Formal and organic characteristics of the principle of the rule of law: new methods of interpretation of the Constitution / S.Shevchuk // Ukrainian law. - 1998. - № 2. - pp. 56-68.

[26] M.Koziubra. The principle of the rule of law and the constitutional jurisdiction//Bulletin of the Constitutional Court of Ukraine. - 2000. - № 4. – pp. 24-32.

1) identification of the principle of the rule of law with "the traditional for the Soviet law" principle of the supremacy of statute law "in the narrow sense of it";

2) identification of the rule of law with the supremacy of reason and justice;

3) understanding of the rule of law as the supremacy of statute law "in the broad sense", i.e. the supremacy of "all normative legal acts";

4) "priority of generally recognised principles and norms of international law over national legislation."

M.Koziubra (2000) entirely rejected a purely positivist understanding of law as such phenomenon, which is identified with the legislation. This approach is perceived as a new one. He considers "law" "as a social phenomenon" (and not "as a result of law-making activity of the state," "as an act of state power", "as a tool of the state"), "as a phenomenon directly linked with such fundamental categories as justice, freedom, equality, humanism."

Substantiating the need for a comprehensive legal analysis, S. Holovatyi (2006)[27] argues that in the Ukrainian academic community an opinion prevails that "the principle of the supremacy of statute law" exists (must exist) along with the "principle of the rule of law" or even acts as a "manifestation" of the latter. This resulted in fairly widespread theses that the "supremacy of statute law" is "one of the meanings of the principle of the rule of law"; that "the principle of the rule of law" does not deny "the principle of the supremacy of statute law"; that " the principle of the rule of law" is "a supremacy of a legal law"; that " the principle of the supremacy of statute law" should be seen as "a formal characteristic of the rule of law."

The author believes that the result of the evolution of the two formulas borrowed from legal positivism of the Soviet period (from "the supremacy of statute law in all spheres of public life" to "the rule of law in society", and from "the supremacy of statute law as a characteristic of a law-based state" to "the rule of law as a characteristic of a law-based state") is the emergence of two trends (approaches) in the Ukrainian academic community regarding the perception and interpretation of the rule of law:

- The first approach is characterised by the search of essential meaning of this phenomenon in general (concept, doctrine, and principle) in the way, relatively speaking, which is *straight mechanistic*. This is when there is combination (adding) of two separate words - "rule" and "law" - for a clear purpose: to determine what should be understood by the term "law" in order to reach the "correct" conclusion what exactly “rules” and as to what (or over what) it "rules" if it is perceived as such that is at the highest level of hierarchy?

- The second approach can be characterised as a *restricting and narrowing* when the authors develop an understanding of the rule of law and explain it without going beyond the correlation between two variables within the "small - large", "share – the whole". In this approach, the rule of law is reduced all-in-all to one of a number of elements (principles) and thus acts as a "small" ("share") of the bigger concept which is, according to the overwhelming majority of Ukrainian authors, the concept of "a law-based state "(as "large", "the whole").

[27] S. Holovatyi. Rule of law: in 3 books. - K., 2006.

It is noted that the straight mechanistic perception of the concept of "the rule of law" is dominant in the modern Ukrainian legal literature; but it is definitely false.

S. Holovatyi considers that "... there is no need for a formal determination of the notion of "the rule of law" or of the relevant legal principle formed on its conceptual basis." In his view, it would be best if the philosophical and legal content of "the rule of law" construction were transmitted by the introduction of one newly-created word "law-rule" into a legal Ukrainian language. The "law-rule" is a denial of arbitrary power of an individual at all, or one, or group, or one of the political bodies (e.g., in the form of the dictatorship of the parliamentary majority) etc. The core of the essential meaning of the principle of the "law-rule" is a categorical and unequivocal denial of any implication of arbitrary and selfish rule of an individual.

Yu.Shemshuchenko (2008)[28] believes that "law is a virtual category, i.e. a set of abstract regulations enshrined in various laws and other normative legal acts. Unlike the principle of the rule of law which is vague, with a formal uncertainty of specific requirements, the principle of the supremacy of statute law is a fundamental basis of the regime of legitimacy. No court will adopt the decision, referring to law as it is. Moreover, practical implementation of the principle of the rule of law is provided through the principle of the supremacy of statute law as objective rules of behaviour are reflected in a law."

According to S.Shevchuk (2011)[29], due to recognition and effectiveness of the principle of the rule of law, law cannot be identified only with a set of normative legal acts but it is considered as a phenomenon which is directly related to such values of natural law as justice, rationality, equality, purposefulness, proportionality and so on. The principle of the rule of law does not deny the principle of legality, which is its integral part given the fact that laws must be legal and comply with the fundamental rights and freedoms. The author points out that the principle of the rule of law has formal and material (organic) aspect. The formal aspect of the principle of the rule of law implies that the state must act in accordance with law and be subject to its effect, whereas the material (organic) aspect provides for that there are standards that define the essence, value and moral characteristic of positive law, they are derived from the constitutional rights and fundamental freedoms and the principles of natural law.

As to the ratio of the principle of the rule of law and the Constitution of Ukraine, the author notes that the validity of the principle of the rule of law cannot be higher than that of the Constitution of Ukraine. One must note that the Constitution contains not only positive (written) principles and norms, but also unwritten principles and values, derived from natural law and integrally tied up with the constitutional text.

[28] The rule of law: problems of theory and practice: in two books /edited by Yu.Shemshuchenko / Book One: The rule of law as a principle of the legal system: problems of theory / edited by N. Onishchenko. - K., 2008.

[29] S. Shevchuk. The rule of law and the highest legal force of the Constitution of Ukraine / S.Shevchuk // Law of Ukraine. - 2011. - №: 5. - pp. 175-186.

According to B.Malyshev (2012)[30], the rule of law exists in two moduses. Firstly, the rule of law is the rule of human rights over the duty of the state to ensure all rights and freedoms. Secondly, the rule of law is supremacy of natural human rights over the rights of the state, the rights of social groups, and those of society.

According to the author, the principle of the rule of law and the principle of the supremacy of statute law are interrelated legal regimes. The relationship between them is shown in the fact that ensuring the principle of the supremacy of statute law is the first and necessary step in establishing the principle of the rule of law. The difference between the principle of the rule of law and that of the supremacy of statute law is that the supremacy of statute law makes a legal system effective and the rule of law - fair.

P.Rabinovych (2013)[31] notes that "interpretation of the rule of law is not the same, but for legal practice it seems quite necessary to provide a certain level of clear, unified understanding".

The author highlights the so-called "element by element" approach (understanding of the "rule of law" through separate explanation of the phenomena of "law" and "rule") and "integrated" approach (where the phenomenon of "the rule of law" is interpreted by specifying those "elements", "principles", "institutions", "mechanisms", "procedures", which it consists of). The author substantiates the dialectical relationship of these two approaches and considers himself to be its follower.

M.Koziubra (2013)[32] is convinced that the extreme complexity and diversity of this concept makes futile any attempt to give any universal definition of the principle of the rule of law, suitable for all occasions. The author gives the elements of the rule of law, noting that the establishment of the rule of law and the functioning of a law-based state are possible in a situation where society consistently and steadily puts into practice the following requirements:

1) Respect for human rights and freedoms (natural, inherent and inalienable human rights and freedoms become crucial in the relationship between him/her and state authorities);

2) supremacy of the Constitution - one of the key elements of the rule of law and a law-based state;

3) the principle of separation of powers, preventing the usurpation of all state power or most of it in the hands of a state body or a person;

4) legality;

5) limitation of the discretionary powers of government;

6) the principle of certainty;

7) the principle of proportionality;

8) the principle of legal security and protection of trust;

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[30] B. Malyshev. The rule of law (theoretical and legal aspects) / B.Malyshev // Bulletin of the Ministry of Justice of Ukraine. - 2012. - №: 8. - pp. 14-20.

[31] P. Rabinovich. The Rule of Law: doctrinal interpretation in Ukraine / P.Rabinovych //Law of Ukraine. - 2013. - №: 9. - pp. 162-175.

[32] M. Koziubra. The Rule of Law and Ukraine / M.Koziubra//Bulletin of the Constitutional Assembly. - 2013. - №: 1. - pp. 146-178.

9) independence of courts and judges.

N.Onischenko and S.Suniehin (2014)[33] consider, inter alia, that the basis of the principle of the rule of law is composed of the natural and legal values, among which one should highlight the natural human rights, which are enshrined, first and foremost, in the relevant international legal conventions and agreements, as well as other values of natural law, particularly the principles of freedom, justice, equality and humanism. In their view, the construction of the principle of the rule of law is, firstly, too abstract to be a reliable guide for its practical application and, secondly, these elements of this principle include many purely evaluative categories and concepts which, being unspecified with account to definite social and cultural dimensions, cannot objectively be the basis of a court decision.

S.Seriohin (2014)[34] points out that when trying to determine the essence and content of the principle of the rule of law we ignore significant differences between the English and Ukrainian legal languages, which is, in particular, in the absence of appropriate equivalent for the word "law" in the modern Ukrainian legal language which is present in the name of the principle of "the rule of law", whereby during the translation of legal texts the word "law" is translated by the word "statute law" or the word "law" that does not fully meet it. These circumstances, in his opinion, are the result of distortion of the content of legal texts and distortion of the nature of concepts such texts apply.

The author believes that in order to make the principle of the rule of law an effective constitutional principle, one needs to move away from attempts to invent a "Ukrainian version" of this principle and, first of all, to refer to the appropriate papers of lawyers-researchers and lawyers-practitioners of the legal system of common law, bearing in mind that in these countries this principle gained its first doctrinal interpretation, and to pay more attention to reputable international organisations' documents, which set out current views on its content and essence.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

In exercising the constitutional jurisdiction, the Constitutional Court of Ukraine has always relied on the provisions of relevant international instruments, and international jurisprudence. This is confirmed by the Constitutional Court of Ukraine in its Decisions dated October 10, 2001 № 13-rp/2001 (the case on the savings of the citizens)[35], April 10, 2003 № 8-rp/2003 (the case on dissemination of information)[36],

[33] Rule of law and legitimacy as the principles of administrative justice: the relationship and interdependence. //Bulletin of the Supreme Administrative Court of Ukraine of 2014., № 2.- K .: Yurinkom Inter, 2014

[34] S. Seriohin. The rule of law in Ukraine: problems of understanding and application. Monograph. - Dnipropetrovsk: Seredniak T., 2014.

[35] The Court referred to the legal position as set out in the judgment of the European Court of Human Rights in the case "James and others v. the United Kingdom" (item 5.4.6 of the reasoning part of the Decision).

[36] The Court referred to the provisions of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the judgments of the European Court of Human Rights "Nikula v. Finland", "Janowski v. Poland" (item 3.6 of the reasoning part of the Decision).

September 30, 2009 № 23-rp/2009 (the case on the right to legal assistance)[37], June 1, 2016 № 2-rp/2016 (the case on judicial control over hospitalisation of disabled persons to psychiatric institution)[38] and others. The development of the principle of the rule of law in the unity of its many elements in the activity of the Constitutional Court of Ukraine was largely carried out under the influence of international institutions, especially the European Court of Human Rights.

For example, in the Decision dated June 20, 2007 № 5-rp/2007 (the case on creditors of enterprises of municipal ownership) the Constitutional Court of Ukraine put proportionality of the restriction of the rights of creditors of enterprises of municipal ownership in the communal sector of economy to meet their claims in proceedings in the cases on bankruptcy dependent on the established principles of justice, referring herein to Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the judgment of the European Court of Human Rights in the case "Osman v. United Kingdom" (item 3.2 of the reasoning part of the Decision).

In determining the content of the category of justice in criminal law, the Constitutional Court of Ukraine in its Decision dated January 26, 2011 № 1-rp/2011 (the case on substitution of death penalty with life imprisonment) referred to the European Court of Human Rights in the case "Scoppola v. Italy" (item 4.5 of the reasoning part of the Decision), Article 15.1 of the International Covenant on Civil and Political Rights, paragraph 2 of the Resolution 1984/50 of the UN Economic and Social Council "Safeguards guaranteeing protection of the rights of those facing the death penalty" dated May 25, 1984, Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (item 5.4 of the reasoning part of the Decision).

In the Decision dated October 11, 2011 № 10-rp/2011 (the case on terms of the administrative arrest) the Constitutional Court of Ukraine formulated the principle of legal certainty, taking into account the case-law of the European Court of Human Rights developed in its judgments in the cases "Baranowski v. Poland", "Novik v. Ukraine," "Soldatenko v. Ukraine" (item 4 of the reasoning part of the Decision).

A number of decisions of the Constitutional Court of Ukraine refer to fundamental element of the principle of the rule of law - independence of courts and judges. For example, adopting the Decision dated May 16, 2007 № 1-rp/2007 (the case on dismissal of a judge from administrative position), the Court took into account the principles of judicial independence developed by the international community and set out, inter alia, in the recommendations of the Committee of Ministers of the Council of Europe dated October 13, 1994 № (94)12 "On the Independence, Efficiency and Role of Judges"; the European Charter on the Law On the Status of Judges dated July 10, 1998; UN Basic Principles of Judicial Independence 1985, approved by Resolutions № 40/32 dated November 29, 1985 and

[37] The Court referred to Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the judgments of the European Court of Human Rights "Yaremenko v. Ukraine", "Lutsenko v. Ukraine," "Shabelnik v. Ukraine" (item 4.2 of the reasoning part of the Decision).

[38] The Court referred to paragraph 30 of the judgment of the European Court of Human Rights in the case of "McKay v. United Kingdom (item 2.3.4 of the reasoning part of the Decision).

№ 40/146 dated December 13, 1985 of the UN General Assembly (item 7.1 of the reasoning part of the Decision).

In the case upon the constitutional petition of 46 People's Deputies of Ukraine concerning the official interpretation of the notions "the highest judicial body", "superior judicial body" and "challenge in cassation" contained in Articles 125 and 129 of the Constitution of Ukraine, the Court noted that the principle of the rule of law implies that the distribution of judicial authorities between the Supreme Court of Ukraine and high courts, determination of stages of justice and forms of court proceedings shall be governed by the guarantees of everyone's right to a fair trail, with account, at the same time, of the legal position of the European Court of Human Rights in "Ponomariov v. Ukraine," "Sokurenko and Strygun v. Ukraine" (item 3.2 of the reasoning part of the Decision dated March 11, 2010 № 8-rp/2010).

In the Decision dated June 21, 2011 № 7-rp/2011 (the case concerning the authorities of the state bodies in the sphere of judiciary) the Constitutional Court of Ukraine, referring to paragraph 4 of Chapter I of Appendix to the Recommendations of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and obligations (dated November 17, 2010) stressed that the independence of judges is guaranteed by independence of the judiciary in general, which is one of the principles of a law-based state (item 3.2.4 of the reasoning part of the Decision).

References to paragraphs 6.1, 6.4 of the European Charter on the Law On the Status of Judges dated July 10, 1998 were made by the Court in the Decision dated June 8, 2016 № 4-rp/2016 (the case on lifelong monthly monetary allowance of retired judges) addressing the remuneration of judges for the performance of their professional duties (item 2.2.7 of the reasoning part of the Decision).

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

Corruption, which is considered a serious threat to the rule of law at the national level, remains a major problem existing in many countries, including Ukraine. This is evidenced, in particular from Parliamentary Assembly of the Council of Europe Resolution 1943 (2013) on corruption as a threat to the rule of law[39], whereby corruption jeopardises the good functioning of public institutions and diverts public action from its purpose, which is to serve the public interest. It disrupts the legislative process, affects the principles of legality and legal certainty, introduces a degree of arbitrariness in the decision-making process and has a devastating effect on human rights. Furthermore, corruption undermines citizens' trust in the institutions. The past and the current level of corruption in Ukraine can be found in the reports on the implementation of international commitments made by Ukraine in the field of

[39] Parliamentary Assembly of the Council of Europe Resolution 1943 (2013) on corruption as a threat to the rule of law http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19948&lang=en

anti-corruption[40], and investigations of corruption in Ukraine[41], on the official website of the National Agency for prevention of corruption.

Since the declaration of independence of Ukraine in 1991 our country has experienced many economic crises upon various reasons. In particular, the economic crisis of 2008-2009 was a result of the global economic crisis and the economic crisis of 2014-2015 years was the result of a national political crisis and armed conflict in the east of the country. The above economic crises have undoubtedly impacted and continue to affect the level of guaranteeing social and economic rights in Ukraine, being, therefore, a serious threat to the rule of law at the national level.

Another well-known serious threat to the rule of law at the national level was the political crisis of 2013-2014 years, which attracted attention of the international community. In particular, in the Resolution 1974 (2014) "The functioning of democratic institutions in Ukraine"[42] the Parliamentary Assembly expressed its deep concern about the political crisis which erupted in Ukraine as a result of the unexpected decision of the Ukrainian authorities to suspend the Association Agreement, including the Deep and Comprehensive Free Trade Agreement with the European Union. The Assembly expressed its concern about damage and excessive use of violence by police against protesters. The Assembly also expressed regret when the Verkhovna Rada adopted a package of so-called "anti-protest laws" under chaotic circumstances on January 16, 2014, which undermined their legitimacy. These were recognised as having infringed the principles of freedom of expression, freedom of assembly and demonstrations, as well as media freedom and freedom of information, and infringed on the right to a fair trial. These laws were undemocratic and repressive and were contrary to the obligations of Ukraine within the European Convention on Human Rights and as a member state of the Council of Europe. The Assembly welcomed the decision of the Verkhovna Rada dated January 28, 2014 to abolish such laws.

Due to the armed conflict the crisis in Eastern Ukraine remains a generally known serious threat to the rule of law at the national level. This is shown in the reports of the UN High Commissioner for Human Rights on the human rights situation in Ukraine, which can be found on the official web site of the UN Office in Ukraine[43] They, inter alia, acknowledge that after two years of the conflict the situation in Eastern Ukraine remains volatile and continues to affect seriously the rights of people, especially those living near the contact line and in areas controlled by armed groups.

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[40] Reports on the implementation of international commitments undertaken by Ukraine in the field of anti-corruption [electronic resource] - Access: https://nazk.gov.ua/zvity-shchodo-vykonannya-mizhnarodnyh-zobovyazan-vzyatyh-ukrayinoyu-v-antykorupciyniy-sferi

[41] Research on corruption in Ukraine [electronic resource] - Access: https://nazk.gov.ua/doslidzhennya-shchodo-korupciyi-v-ukrayini

[42] Parliamentary Assembly of the Council of Europe Resolution 1974 (2014) The functioning of democratic institutions in Ukraine [electronic resource] - Access: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp ? fileid = 20488 & lang = en

[43] UN publications in Ukraine [electronic resource] - Access: http://www.un.org.ua/ua/publikatsii-ta-zvity/un-in-ukraine-publications/3688-dopovidi-oon-shchodo-sytuatsii- z-pravamy-liudyny

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

Such international events as migration and terrorism have not affected the interpretation of the rule of law by the Constitutional Court of Ukraine, since during its activity it has not considered cases, which would have raised the issue of constitutionality or a need of the official interpretation of the legislation in the sphere of regulation of migration processes or legislation on combating against terrorism. Thus, the Constitutional Court of Ukraine has no had a chance to interpret the rule of law in terms of these issues.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

As to the collisions between the norms of the Constitution of Ukraine and international treaties in the case-law of the Constitutional Court of Ukraine.

According to the Fundamental Law of Ukraine, conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine (Article 9.2), opinions on the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, submitted to the Verkhovna Rada of Ukraine for granting agreement on their binding nature are provided by the Constitutional Court of Ukraine (Article 151.1). In practice there have only been one case of implementation of this authority, i.e. the case on the Rome Statute of the International Criminal Court (hereinafter - the Rome Statute), in which the Constitutional Court of Ukraine found a controversy (collision) between its specific norms and the norms of the Constitution of Ukraine. Therefore, in the Opinion № 3-v / 2001 dated July 11, 2001 the Court declared the Rome Statute as such that does not meet the Constitution of Ukraine, in the part concerning the provisions of paragraph ten of its preamble and Article 1, in which "An International Criminal Court ... shall be complementary to national criminal jurisdictions" because the opportunity to complement the judicial system of Ukraine is not provided by Chapter VIII "Justice" of the Constitution of Ukraine. As a result, ratification of the Rome Statute became possible only after the adoption of appropriate amendments to the Constitution of Ukraine, which were implemented with the adoption of the Law of Ukraine № 1401-VIII "On Amendments to the Constitution of Ukraine (on justice)" dated June 2, 2016, pursuant to which Article 124.6 of the Constitution of Ukraine reads: "Ukraine may recognise the jurisdiction of the International Criminal Court as provided for by the Rome Statute of the International Criminal Court".

The Fundamental Law of Ukraine empowers the Constitutional Court of Ukraine also to provide opinions on the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force (Article 151.1). However, currently the sole body of the constitutional jurisdiction of Ukraine has not had an occasion to consider any case of such character, and therefore to detect collisions (contradictions) between the norms of the Constitution of Ukraine and international treaties of Ukraine.

As to the collisions between the norms of laws and bylaws and international treaties in the case-law of the Constitutional Court of Ukraine.

Given the prescriptions of Article 9 of the Constitution of Ukraine, Article 26 of the Vienna Convention on the Law of Treaties 1969, Articles 15, 19 of the Law of Ukraine № 1906-IV "On International Agreements of Ukraine" dated June 29, 2004, the international legal principle of honest compliance of international obligations, the Constitutional Court of Ukraine while implementing justice comes from that there is a priority of an international treaty of Ukraine, ratified by the Verkhovna Rada of Ukraine over the national law and other laws except the Constitution of Ukraine. In view of the above, and the principle of friendly attitude to international law, in a number of its decisions the Constitutional Court of Ukraine stated not only incompliance of the disputed norms of national legislation to the norms of the Constitution of Ukraine, but also their contradiction (collision) with the corresponding norms of international law.

The Constitutional Court of Ukraine has been applying such practice from the beginning of its activity. Among its examples it is appropriate to remind its Decision in the case on the death penalty № 11-rp / 1999 dated December 29, 1999, where it recognised unconstitutional certain provisions of the Criminal Code of Ukraine, which provided the death penalty as a type of punishment, and stated that, "Death penalty as a type of punishment is also contrary to Article 28 of the Constitution of Ukraine, according to which "No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity". This article reproduces the provisions of Article 3 of the European Convention on Human Rights of 1950. Inconsistency of death penalty with this article of the Convention is reaffirmed by the European Court of Human Rights ..." (item 6.1 of the reasoning part of the Decision).

On the cases of different interpretation of a specific right or freedom by the Constitutional Court of Ukraine, compared with the regional / international courts (like African, Inter-American or European courts) or international organisations (including the United Nations Human Rights Committee)

The Constitutional Court of Ukraine in its case law takes into account the requirements of international treaties ratified by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by international bodies which jurisdiction was recognised by Ukraine, in particular the European Court of Human Rights (hereinafter – the ECHR), usually agreeing its own interpretation of a particular right or freedom with them. In this regard, currently there are only a few cases of slightly different approaches of the Constitutional Court of Ukraine and the ECHR to the interpretation of the content or scope of a particular right or freedom.

For example, such case concerned the right to judicial protection, particularly its component - the right to enforce the judgment without undue delay. In the Decision of the Constitutional Court of Ukraine in the case upon the moratorium on compulsory disposal of property № 11-rp / 2003 dated June 10, 2003 the Cout recognised as constitutional the Law of Ukraine № 2864-III "On introducing moratorium on compulsory disposal of property" dated November 29, 2001, which in practice had prevented the execution of judgments in cases where a state enterprise acted as a debtor. Herewith it was indicated that the contested law did not violate the constitutional requirement of a mandatory nature of courts' decisions, since the decisions of courts on compulsory alienation of property of companies taken before and after the adoption of this law are not cancelled by it, they remain in force, and their execution is suspended until the improvement of the mechanism of the forced sale of property. In other words, the law set the extended period of their execution. At the same time, according to the established case-law of the ECHR, the right of access to court under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms includes the right to enforce the judgment without undue delay. As it is noted in the ECHR judgment in the case "Immobiliare Saffi v. Italy", the delay of implementation for a period which is essential for solving the problems of public nature, under certain circumstances, can be considered reasonable. However, the ECHR did not find such grounds and stated violation of Article 6 § 1 of the Convention in two cases against Ukraine concerning the application of the Law, the provisions of which had been recognised by the Constitutional Court of Ukraine as such that did not violate the principle of compulsory enforcement of courts' decisions. In particular, in the judgment "Sokur v. Ukraine", the ECHR noted that due to the delay of about three years in execution of a decision in the applicant's case, the authorities deprived the provision of Article 6.1 of its practical effect.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

According to Article 19.2 of the Fundamental Law of Ukraine, bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine. The issue of compliance of laws and other normative and legal acts with this norm of the Constitution of Ukraine has arisen in many cases that were addressed by the Constitutional Court of Ukraine. Many of these cases concerned the resolution of disputes of competence related to the intervention of one of the authorities to the other, and delegation of one's own powers to another body by issuing a relevant legal act. The Constitutional Court of Ukraine decides such disputes within consideration of conformity of laws and other legal acts with the Constitution of Ukraine and official interpretation of the Constitution of Ukraine and the laws of Ukraine. (Article 147.2 of the Constitution of Ukraine). Resolution of such dispute is essentially confined to recognition of the provisions of a

legal act that establishes certain powers as unconstitutional or confirmation of constitutionality of these provisions. Accordingly, the provisions of a legal act, issued under the above disputed powers, may be declared constitutional or unconstitutional.

For instance, the Constitutional Court of Ukraine considered a significant number of cases regarding disputes related to the intervention of parliament and government of Ukraine in the competence of each other, as well as the competence of local self-government.

In particular, the most typical examples of resolution of disputes on the interference of the Parliament in the powers of the executive and local authorities are the Decisions in the case upon the housing services № 2-rp / 1999 dated March 2, 1999 and in the case on prices and tariffs for housing and municipal, and other services № 2-rp / 2000 dated February 10, 2000, in which the Constitutional Court of Ukraine distinguished the jurisdiction of the relevant authorities in the field of development and implementation of pricing policies, as well as social protection. In these decisions the Court stated that by making direct regulation of prices and tariffs, the Verkhovna Rada of Ukraine, in fact, had interfered in the sphere of jurisdiction of relevant executive authorities and local self-government, having violated the principle of separation of powers.

The example of solving the dispute concerning the interference of the Cabinet of Ministers of Ukraine to the authorities of the Verkhovna Rada of Ukraine may be a Decision in the case № 19-rp / 2009 dated September 8, 2009, in which the Constitutional Court of Ukraine having distinguished the competence of the parliament and government in the sphere of pensions stated that the Cabinet Ministers of Ukraine is not empowered to establish pension payments rate. Having secured in the appropriate norm the limits of pension payments rate for certain categories of citizens, the Cabinet of Ministers of Ukraine intervened in the exclusive jurisdiction of the legislator, thus violating a number of provisions of the Constitution of Ukraine.

In the case law of the Constitutional Court of Ukraine, there are cases of interference of the President of Ukraine in the powers other public authorities, such as the Decision № 8-rp / 2004 dated March 31, 2004 in the case on the introduction of state monopoly in the area of control over production of specific types of products. In this decision the Constitutional Court of Ukraine concluded that the provisions on introduction of state monopoly in sphere of control over production and turnover of alcohol, alcohol drinks, and tobacco products, contained in the rules of the relevant decree of the President of Ukraine, do not meet the requirements of Article 42.3 of the Constitution of Ukraine reading that types and limits of monopolies are determined by law. Having secured relevant norms in the decree, the President of Ukraine intervened in the powers of the Verkhovna Rada of Ukraine.

An example of resolving by the Constitutional Court of Ukraine of a dispute regarding interference of the President of Ukraine in the powers of Cabinet of Ministers of Ukraine may serve the Decision № 7-rp / 2005 dated October 5, 2005 in the case on the oil industry management. The Court stated that empowering the Cabinet of Ministers of Ukraine with the obligation to decide on the transfer as a contribution of the state to the statute fund of the National Joint Stock Company "Naftogaz Ukrainy" of the state-owned share in the Joint Stock Company

"Ukrtatnafta"… and Open Joint Stock Company "Halychyna Oil Refinery"... by a relevant decree, the President of Ukraine actually exercised management of the specific object of state property (state-owned shares) and thus interfered in the management of state property, which is the competence of the Cabinet of Ministers of Ukraine. The relevant norms of the decree of the President of Ukraine were declared unconstitutional.

Opposite to interference in the powers of other governmental agency is the practice of delegating one's own powers to another body, which in certain cases may also be declared unconstitutional. For example, the case law of the Constitutional Court of Ukraine has a number of decisions on the unconstitutionality of the norms of legislation, by which the Parliament delegated its own powers to the government, in particular, determination of the individual elements of legal mechanism of regulation of import duty[44], establishment of competition rules in the procurement of goods, works and services for public funds[45]. These decisions were motivated by the fact that the Constitution of Ukraine does not provide for the delegation by the Parliament of its legislative powers to other state bodies or their officials.

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

According to the Constitution of Ukraine, decisions of the Constitutional Court of Ukraine are mandatory for execution throughout the territory of Ukraine, final and shall not be appealed (Article 150.2). The above constitutional provision causes the binding power of decisions of the Constitutional Court of Ukraine for courts of general jurisdiction as well. In addition, the procedural codes of Ukraine secure special rules that envisage binding power of decisions of the Constitutional Court of Ukraine for courts of general jurisdiction. According to these norms, unconstitutionality of a law, other legal act or its separate provision, applied by the court in deciding the case, if a court decision is not yet executed, established by the Constitutional Court of Ukraine is a ground for review of court decisions under the new circumstances (item 4 of Article 361.2 of the Code of Civil Procedure of Ukraine, item 4 Article 459.2 of the Code of Criminal Procedure of Ukraine, item 5 Article 112.2 of the Code Economic Procedure of Ukraine, item 5 of Article 245.2 of the Code of Administrative Procedure of Ukraine). The need for such rules is stipulated by the fact that the provisions of the law or other legal act declared unconstitutional can not be considered as legitimate grounds for a judgment and, therefore, based on this the latter is subject to revision under new circumstances. The special norm which provides the binding nature of decisions of the Constitutional

[44] Decision of the Constitutional Court of Ukraine № 15-rp / 2009 dated June 23, 2009 in the case on temporary increment to the effective import duty rates.

[45] Decision of the Constitutional Court of Ukraine № 22-rp / 2008 dated October 9, 2008 in the case upon the constitutional petition of the President of Ukraine concerning conformity with the Constitution of Ukraine (constitutionality) of the Resolution of the Cabinet of Ministers of Ukraine "On Procurement of Services Related to the Development of Information and Telecommunication System of the State Register of Voters".

Court of Ukraine for other courts, is also Article 74 of the Law of Ukraine "On the Constitutional Court of Ukraine", according to which the latter may determine that its decision have pre-judicial effect for courts of general jurisdiction during consideration of claims related to legal relations that emerged on the basis of an unconstitutional act, which implies mandatory nature of facts established in this decision for other courts while considering relevant cases.

Data of the Single State Register of court decisions (automated system of collection, storage, protection, recording, searching and providing electronic copies of court decisions)[46] testify to the application of the case law of the Constitutional Court of Ukraine by courts of general jurisdiction in resolution of cases of various categories. At the same time, information concerning cases of "disrespect" to the decisions of the sole body of constitutional jurisdiction on the part of courts of general jurisdiction in resolution of individual categories of cases is missing.

Quite clearly distinguishing the competence of the Constitutional Court of Ukraine and courts of general jurisdiction, in particular the highest judicial body of this system – the Supreme Court of Ukraine, the legislation of Ukraine actually prevents conflicts between them. Instead, it creates the basis for their active cooperation. In particular, the Supreme Court of Ukraine is authorised to apply to the Constitutional Court of Ukraine in cases when courts of general jurisdiction in exercising justice have doubts as to constitutionality of laws and other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea (Article 150 of the Constitution of Ukraine, Articles 13, 40 of the Law of Ukraine "On the Constitutional Court of Ukraine") as well as in cases of necessity of official interpretation of the Constitution and laws of Ukraine (Article 150 of the Constitution of Ukraine, Articles 13, 41 of the Law of Ukraine "On the Constitutional Court of Ukraine").

Yet, it should be noted that disputes over competence of the Constitutional Court of Ukraine and courts of general jurisdiction, which could have potentially escalated into conflicts between them existed in the past and were the subject of the constitutional proceedings. The example of resolving such dispute is the Decision of the Constitutional Court of Ukraine in the case on jurisdiction of acts on appointment or dismissal of officials № 8-rp / 2002 dated May 7, 2002, which, inter alia, stipulates that administration of justice in regard to the acts of the President and the Parliament on appointment or dismissal of officials means consideration of the case on the constitutionality of these acts in the form of constitutional proceedings, and on their legality - by courts of general jurisdiction in the form of an appropriate legal proceedings.

[46] [electronic resource] – access mode: http://www.reyestr.court.gov.ua/

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law*, non bis in idem, nulla poena sine lege,* etc.).

Regarding the development by the Constitutional Court of Ukraine of the concept of independence of courts and judges.

The doctrine of independence of courts and judges was formulated by the Constitutional Court of Ukraine in many cases in which the applicants contested the constitutionality of legal acts which regulated various aspects of implementation of the judiciary, through interpretation of the provisions of Articles 126.1 and 126.2[47] of the Constitution of Ukraine in the Decision № 19-rp / 2004 dated December 1, 2004, as well as when providing opinions on the conformity to the Constitution of Ukraine of the amendments to it.

For example, in one of its decisions the Constitutional Court of Ukraine pointed out that in the Fundamental Law of Ukraine the independence as part of the constitutional status of an individual and his/her professional activity is defined only in relation to judges (item 2.2.3 of the reasoning part of the Decision № 3-rp / 2013 dated June 3, 2013).

Providing the official interpretation of the provisions of Article 126.1 of the Constitution of Ukraine, the Constitutional Court of Ukraine in its Decision № 19-rp / 2004 dated December 1, 2004 in the case on the independence of judges as part of their status stated that the latter is the constitutional principle of organisation and functioning of the courts, and professional activity of judges who during administration of justice are subject only to the law. Judicial independence lays, first of all, in their autonomy, lack of dependence during execution of justice on any circumstances and other will, except the law. Guaranteed by the Constitution of Ukraine, independence of judges is ensured primarily by special procedure for their election or appointment and dismissal; prohibition for any influence on judges; protection of their professional interests; special procedure of bringing judges to disciplinary liability; providing by the state of personal security of judges and their families; guarantee of funding and proper conditions for functioning of courts and judges and their legal and social protection; prohibition for judges to belong to political parties and trade unions, to engage in any political activity, hold a representative mandate, engage in certain activities; bringing to legal responsibility of the guilty persons for disrespect to judges and the court; judicial self-government. Additional guarantees of independence and integrity of judges, besides those envisaged by the Constitution of Ukraine, may also be established by laws. Herewith guarantees of independence of judges enshrined by the Constitution and laws of Ukraine as necessary conditions of justice by unprejudiced, impartial and fair court shall be actually provided. And in the case of the adoption of new laws or amending the existing ones it is not allowed to reduce the guarantees of independence and

[47] Article 126.1, 126.2 of the Constitution of Ukraine state that:
„The independence and immunity of judges are guaranteed by the Constitution and the laws of Ukraine.
Influencing judges in any manner is prohibited".

immunity of judges (paragraphs one-three, seven of item 4.1 of the reasoning part of the Decision, items 1.1, 1.3 of the operative part of the Decision).

The Constitutional Court of Ukraine has repeatedly stressed that independence of judges is a means of ensuring the constitutional right to judicial protection enshrined in Article 55.1 of the Constitution of Ukraine (Decisions № 19-rp / 2004 dated December 1, 2004, № 3-rp / 2013 dated June 3, 2013, № 4-rp / 2016 dated June 8, 2016, № 5-rp / 2016 dated July 8, 2016). On this occasion it also indicated that any reduction of the level of guarantees of independence of judges runs contrary to the constitutional requirement of strict ensuring of independent judiciary and the human and citizen's right to protect the rights and freedoms by the independent court, since it leads to limitation of the possibilities to implement this constitutional right and therefore does not comply with Article 55.1 of the Constitution of Ukraine (item 3.2 of reasoning part of the Decision № 3-rp / 2013 dated June 3, 2013).

The Constitutional Court of Ukraine believes that important safeguards of independence of judges and courts are their constitutional social (material) guarantees. For example, in its decisions its repeatedly stressed that one of the constitutional guarantees of judicial independence is a special procedure for funding courts and judges aimed to provide proper conditions for exercise of independent justice; an important mechanism for providing such guarantee is the duty of the state to provide funding and proper conditions for functioning of courts and judges in a separate line in the State Budget of Ukraine of expenditures for the maintenance of courts enshrined in Article 130.1 of the Constitution of Ukraine (the Decisions № 6-rp / 1999 dated June 24, 1999, № 4-rp / 2007 dated June 18, 2007, № 7-rp / 2010 dated March 11, 2010, № 3-rp / 2013 dated June 3, 2013, № 5-rp / 2016 dated July 8, 2016). This centralised mode of financing the judiciary from the State Budget of Ukraine to an extent that has to ensure appropriate economic conditions for full and independent administration of justice, financing of court needs (costs for the proceedings, repair and protection of court premises, communal services, purchase of office equipment, postage costs, etc.) is to limit any impact on the court and is aimed at guaranteeing judicial activities based on the principles and regulations of the Constitution of Ukraine (item 2.2 of the reasoning part of the Decision № 6-rp / 1999 dated June 24, 1999 in the case on financing courts). Separate financing of each court of general jurisdiction and the Constitutional Court of Ukraine provides conditions for the constitutional guarantees of autonomy and independence while executing justice since it makes impossible the negative impact on them through the mechanisms of allocation and distribution of costs envisaged by the law on the State Budget of Ukraine; courts of all jurisdictions and levels are legal entities of public law, and therefore have sufficient legal grounds to dispose of these funds independently (item 3.3.3 of the reasoning part of the Decision № 7-rp / 2010 dated March 11, 2010).

Furthermore, according to the legal position of the Constitutional Court of Ukraine, reduction (including through suspension of certain legal acts) of expenditures of the State Budget of Ukraine for financing of courts and judges does not ensure full and proper administration of justice, proper functioning of judicial system, which can lead to less confidence of citizens to the state authority, threat of

realisation of human and citizen's right to judicial protection guaranteed by the Constitution of Ukraine (item 5.4 of the reasoning part of the Decision № 5-rp / 2002 dated March 20, 2002, item 7.1 of the reasoning part of the Decision № 20-rp / 2004 dated December 1, 2004).

The Constitutional Court of Ukraine considers social guarantees of judges after termination of their term of office to be important guarantees of judicial independence. In particular, in a number of its decisions the Constitutional Court of Ukraine stated that the constitutional status of judges envisages that he/she will be granted the status of a retired judge in future, which is also a guarantee of proper administration of justice, gives grounds to expect high standards from a judge and maintain confidence in their competence and impartiality. The right of a retired judge to pensions and monthly lifetime monetary allowance is a guarantee of the independence of acting judges. The monthly lifetime monetary allowance is a special form of social security of judges, which guarantees monthly tax-free payment by the state that serves to ensure their proper material maintenance, including after the release of a judge from his duties. The monthly lifetime monetary allowance of judges is aimed at providing decent living standards relevant to his/her status, as the judge is limited in the right to earn additional material values, particularly to occupy any other paid positions, perform other remunerated work. The constitutional principle of judicial independence also means the constitutional imperative of the protection of material support of judges from its cancellation or reduction of the achieved level without appropriate compensation as a guarantee to prevent influence or interference in the administration of justice. Thus, the constitutional status of judges provides sufficient financial support of a judge both during exercise of powers (judicial compensation), and in the future in view of the achievement of retirement age (pension) or due to termination of powers and acquisition of the status of a retired judge (monthly lifetime monetary allowance). The status of judges and its elements, including material support of judges after termination of powers is not a personal privilege but a means to ensure independence of acting judges and is granted to ensure the rule of law and in the interests of people who appeal to court and expect fair justice. According to Article 130 of the Constitution of Ukraine, the state ensures funding and proper conditions for the operation of courts and the activity of judges. Expenditures for the maintenance of courts are allocated separately in the State Budget of Ukraine. This provision provides the funding of the monthly lifetime monetary allowance of judges from the State Budget of Ukraine, not from the Pension Fund of Ukraine (item 7 of the reasoning part of the Decision № 8-rp / 2005 dated October 11, 2005, item 3.2.2, 3.3.3, 3.3.4 of reasoning part of the Decision № 4-rp / 2007 dated June 18, 2007, item 2.2.5, 2.2.6 of the reasoning part of the Decision № 3-rp / 2013 dated June 3, 2013). These legal positions were also accounted by the Constitutional Court of Ukraine in the Decision № 4-rp / 2016 dated June 8, 2016 in the case on lifelong monthly monetary allowance of retired judges.

In view of the above legal positions, the Constitutional Court of Ukraine in its decisions ruled that the provisions of laws of Ukraine on reducing the size of the monthly lifetime monetary allowance of retired judges were limiting guarantees of judicial independence, and therefore were unconstitutional (Decision № 8-rp / 2005

dated October 11, 2005, № 3-rp / 2013 dated June 3, 2013, № 4-rp / 2016 dated June 8, 2016). Unconstitutional were also declared the provisions depriving judges of the possibility of further indexation of such maintenance (Decision № 3-rp / 2013 dated June 2013); terminating payments of monthly lifetime monetary allowance for the period of work of retired judges in certain positions (Decisions № 4-rp / 2007 dated June 18, 2007, № 3-rp / 2013 dated June 3, 2013, № 4-rp / 2016 dated June 8, 2016), establishing the maximum amount of the monthly lifetime monetary allowance (Decisions № 4-rp / 2007 dated June 18, 2007, № 4-rp / 2016 dated June 8, 2016).

The Constitutional Court of Ukraine, due to the legal positions set out in its decisions and opinions, was involved to the development of a concept of such an important component of judicial independence as the institute of their immunity. In particular, it explained the concept of integrity of judges and its guarantees, when providing official interpretation of the provisions of Article 126.1 of the Constitution of Ukraine (Decision № 19-rp / 2004 dated December 1, 2004) in which the sole body of constitutional jurisdiction of Ukraine ruled that the immunity of judges is one of the elements of their status, a component of their independence. It is not a personal privilege but a public legal purpose to provide unprejudiced administration of justice, impartial and fair trial. According to the provisions of Article 126.1 of the Constitution of Ukraine, the content of immunity of judges as a condition of their professional duties is not limited by a guarantee, under which a judge shall not be detained or arrested without the consent of the Verkhovna Rada of Ukraine, until a verdict of guilty is rendered by a court, enshrined in Article 126.3. Additional guarantees of immunity of judges may be also established by laws (item 4.2 of the reasoning part of the Decision, item 1.2 the operative part of the Decision). Following, inter alia, the above legal position, in the Opinion № 1-v / 2012 dated July 10, 2012, the Constitutional Court of Ukraine recognised as such that do not comply with the Constitution of Ukraine the proposed amendments to it, which provided the abolition of immunity of judges as it could indirectly lead to restriction of the right to judicial protection guaranteed by Article 55 of the Constitution of Ukraine (item 5.2.2 of the reasoning part, item 2 of the operative part of the Opinion).

Thanks to the official interpretation of Article 126.2 of the Constitution of Ukraine, according to which influencing judges in any manner is prohibited, the Constitutional Court of Ukraine also contributed to the standards of enforcement of this guarantee of judicial independence. It held that this provision should be understood as ensuring the independence of judges in connection with the administration of justice, as well as the prohibition against judges of any action, regardless of their form of manifestation on the part of the state bodies and institutions, bodies of local self-government, their officials and officers, individuals and legal entities to prevent the execution of professional duties by judges or persuade them to an unjust decision, etc. (item 2 of the operative part of the Decision № 19-rp / 2004 dated December 1, 2004).

Concerning the definition of standards of law-making and law enforcement to ensure respect of the principle of nulla poena a sine lege.

The principle of *nulla poena a sine lege* and its components requirements – *nulla poena sine praevia lege poenali* and *nulla poena sine lege scripta* enshrined in

Article 58 of the Constitution of Ukraine[48], has repeatedly been the subject of interpretation by the Constitutional Court of Ukraine, which in this way defined the standards for law-making and law enforcement in terms of this principle in Ukraine.

The first official interpretation of Article 58 of the Constitution of Ukrainewas provided by the Constitutional Court of Ukraine in its Decision № 1-zp / 97 dated May 13, 1997 in the case on incompatibility of a deputy mandate, in which, inter alia, explained that the principle of the irreversibility of the law in time also applies to the Constitution, which according to its preamble, is the fundamental law of the state (item 5.3 of the reasoning part of the Decision).

In the Decision № 1-rp / 99 dated February 9, 1999 in the case on retroactive force of laws and other legal acts, the Constitutional Court of Ukraine concluded that the provisions of Article 58.1 of the Constitution of Ukraine on retroactive force of laws and regulatory acts in cases where they mitigate or annul the responsibility of the person includes individuals and does not apply to legal persons. But this does not mean that this constitutional principle can not be applied to laws and other legal acts that mitigate or annul the responsibility of legal persons. Yet granting the retroactive force to such laws and legal acts may be provided by the direct reference to it in a law or other legal act (item 3.3, 3.4 of the reasoning part of the Decision).

In its turn, the Constitutional Court of Ukraine in the Decision № 6-rp / 2000 dated April 19, 2000 in the case on retroactivity in time of criminal law, based on the provisions of Article 58 of the Constitution of Ukraine, made the following conclusions:

- action as a certain offense may be recognised only by law and not by any other legal act (item 2.3 of the reasoning part of the Decision);

- the essence of retroactivity in time of laws and other legal acts is that their provisions apply to legal relationships which arose before their entry into force under the condition that they cancel or mitigate responsibility of a person; but their implementation using subordinate regulatory acts is impossible in some areas of law, including criminal law (item 2.2 of the reasoning part of the Decision);

- a criminal law, which defines an action as a crime, may contain references to provisions of other normative and legal acts; if these provisions change in the future, the general meaning of a criminal law does not face changes; the opposite would have meant a possibility to change the criminal law by regulations, which would run contrary to the requirements of the Constitution of Ukraine (item 4.6 of the reasoning part of the Decision).

As to the application of the principle of non bis in idem in the case law of the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine in its case law has only a few times quoted, however, has not provided interpretation of the principle of non bis in idem,

[48] Article 58 of the Constitution of Ukraine provides that:

"Laws and other normative legal acts have no retroactive force, except in cases where they mitigate or annul the responsibility of a person.

No one shall bear responsibility for acts that, at the time they were committed, were not deemed by law to be an offence".

enshrined in Article 61.1 of the Constitution of Ukraine, according to which for one and the same offence, no one shall be brought twice to legal liability of the same type (Decisions of the Constitutional Court of Ukraine № 9-rp / 99 dated October 27, 1999 in the case on deputy immunity, № 7-rp / 2001 dated May 30, 2001 in the case on liability of legal persons.

The above are just some examples of numerous decisions of the Constitutional Court of Ukraine, which have contributed to the standards of law-making or law enforcement.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

So far there has been no such case law of the Constitutional Court of Ukraine.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

Public officials (civil servants and servants of bodies of local self-government) like any other individual in Ukraine shall bear responsibility for unlawful actions committed by them. Responsibility for violation of the law, committed by public officials, has its peculiarities, taking into account specificity of their actions, social value of the official activity.

According to Article 19.2 of the Constitution of Ukraine, bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

The effective activity of the secretariat of state administration is impossible without strengthening responsibility of civil servants for performing their duties, observance of discipline and legitimacy.

Depending on a type of violation of law, one singles out the following types of legal responsibility:

1. disciplinary;
2. material;
3. constitutional and legislative;
4. administrative;
5. criminal;
6. civil.

Disciplinary liability of civil servants

The basic law that determines the principles, legislative and organisational basis of ensuring public, professional, politically impartial, effective, citizens-oriented public service which functions in the interests of the state and society as well

as the procedure of implementation by citizens of Ukraine of equal access to civil service based on their personal qualities and achievements is the Law of Ukraine "On Civil Service" № 889-VIII dated December 10, 2015 (hereinafter – Law).

Chapter VIII of the Law (disciplinary and material liability of civil servants) directly envisages:

- basis of the disciplinary liability;
- grounds for bringing a civil servant to disciplinary liability;
- types of disciplinary penalties and general conditions of their application.

Disciplinary liability of civil servants shall be determined as a complex of administrative and legal relationships that appear in view of disciplinary penalties laid on civil servants provided by the legislation for the violation of the service discipline.

For failure to perform or improper performance of functions, determined by this Law and other normative and legal acts in the sphere of civil service, job profile, violation of ethics rules of behaviour and other violation of service discipline, a civil servant is brought to disciplinary liability in the order, prescribed by this Law (Article 64 of the Law).

In particular, the ground to bring a civil servant to disciplinary liability can be commitment of a disciplinary offence. A disciplinary offence is an illegal violation by a civil servant of the norm of legislation and authorities laid on him/her.

Disciplinary penalty is intended to renew the affected public and service relationship and avoid the negative consequences of the offense, education of the servant in the spirit of observance of legality, proper execution of professional functions and prevent violations. In the acting legislation the disciplinary sanctions imposed on civil servants, are provided in Article 66.1 of the Law:

- reprimand;
- reproof;
- notice concerning incomplete service competence;
- dismissal from civil service office.

Disciplinary penalty must match the nature and severity of the disciplinary offense and the degree of guilt of a civil servant. When determining the type of disciplinary penalty it should be taken into account the nature of the offense, the circumstances under which it was committed, the onset of serious consequences, voluntary reimbursement of the damage caused, previous behaviour of the civil servant and his/her attitude to the performance of official duties.

Disciplinary penalties such us reprimand are imposed (applied) by the subject of appointment of the civil servant to the office, other types of disciplinary penalties - by the subject of appointment upon the submission of the disciplinary commission. These penalties are applied not later than six months from the day of disclosure of a disciplinary offence, without consideration of the time of incapacity to work or being in vacation, and also are not applied after termination of one year from its commitment.

Civil servant can also use legal assistance of an advocate or other representative authorised by him/her.

Material liability of civil servants

Material and moral damage caused to individuals and legal entities by unlawful decisions, actions or inactions of civil servants during the exercise of their powers shall be compensated at the expense of the state, i.e. material liability executes law renewal function and arises for the offense, which caused material damage.

The state represented by the subject of appointment has the right to recourse (regress) in the amount and manner specified by law. It means that civil servant is obliged to compensate to the state the damage caused by improper performance of official duties. In the case of recourse (regress) a civil servant is liable only for damage intentionally caused by his/her wrongful action or inaction.

Civil servants are also brought to material liability for corruption actions which do not contain offense elements and do not entail criminal liability (e.g. damage caused to the state, enterprise, institution, organisation by illegal use of premises, transport and communication, other state property or funds shall be compensated by guilty persons authorised to perform state functions, on general terms and conditions of the material liability of employees and military personnel.

Constitutional and legal liability of civil servants

Most of the constitutional and legal norms do not contain sanctions and in case they are violated legal liability arises prescribed by other fields of law (criminal, administrative, labour etc).

Constitutional norms can be divided in two groups:

a) blank sanctions which do not establish specific forms of liability and which refer to the criminal, administrative or other branch legislation for resolution of issue on bringing to legal liability;

b) sanctions providing specific forms of liability.

In the latter case it goes about the special type of judicial liability – constitutional and legal liability.

Constitutional and legal liability is a special type of legal liability that has a complicated political and legal character, arises for the offence of the constitutional and legal delict and is expressed in the specific unfavourable consequences for the subject of constitutional violation in the prescribed constitutional and legal norms.

Yet the constitutional and legal liability of civil servants arises not only for violation of norms of the Constitution of Ukraine but also other laws.

Elimination from performing state functions, such as early termination of deputy powers or discharge from an elected office and prohibition to occupy positions in state bodies and its apparatus are specific measures of state coercion, which are suggested to be combined in the concept of “constitutional and legal responsibility” because they are based on the constitutional provisions regarding the rules of functioning of the constitutional bodies and implementation of the civil service and do not fall into any other type of responsibility (administrative, disciplinary, criminal, civil and legal).

Administrative liability of civil servants

Administrative liability is a type of legal responsibility, the content of which implies obligatory application by a competent subject of measures of influence envisaged by the legislation for the administrative offence committed by the offender following the prescribed procedure.

Apart from the Code of Ukraine on Administrative Offences (Chapter 13-A), administrative liability of civil servants is defined by the Law of Ukraine "On prevention of corruption".

This law defines legal and organisational basis of the system of preventing corruption in Ukraine, the content and the procedure o application of preventive anti-corruption mechanisms, rules to eliminate the consequences of corruption violations.

The subjects to whom the provisions of this law are applied are:

1) Individuals, empowered to perform functions of the state or local self-government:

a) President of Ukraine, Chairperson of the Verkhovna Rada of Ukraine, his First Deputy and Deputy, Prime Minister of Ukraine, First Vice Prime Minister of Ukraine, Vice Prime Ministers of Ukraine, ministers and other heads of central bodies of executive power how are not the part of the Cabinet of Ministers of Ukraine, and their deputies, Head of the Security Service of Ukraine, Prosecutor General of Ukraine, Head of the National Bank of Ukraine, Head and other members of the Accounting Chamber Ukraine, Ukrainian Parliament Commissioner for Human Rights, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, Chairman of the Council of Ministers of the Autonomous Republic of Crimea;

b) People's Deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils, village, town and city heads.

c) civil servants, officials of local self-government;

d) military officials of the Armed Forces of Ukraine, State Service of the Special Communications and Information Protection of Ukraine and other military units established under laws, except for military servicemen of military regular service;

e) judges of the Constitutional Court of Ukraine, other professional judges, members, disciplinary inspectors of High Qualification Commission of Judges of Ukraine, officials of the Secretariat of this Commission, Head, Deputy Head, secretaries of sections of the High Council of Justice, and other members of the High Council of Justice, people's assessors and jurors (while performing these functions)

f) officers and officials of the State Penitentiary Service, tax police entities and officials of civil protection units, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine;

g) officials and officers of the bodies of prosecutor's office, Security Service of Ukraine, State Bureau of Investigation, National Anti-Corruption Bureau of Ukraine, diplomatic service, state forest protection, state protection of natural areas, central body of executive power, which provides development and implementation of state tax policy and public policy in the sphere of customs;

h) members of the National Agency for prevention of corruption;

i) members of the Central Election Commission;

j) the policemen;

k) officials and officers of other state authorities, authorities of the Autonomous Republic of Crimea;

For purposes of this Law, persons who are equal to those authorised to perform state functions or those of local self-government are defined:

a) officials of legal entities of public law, who are not specified in Article paragraph 1.1. of this Article;

b) persons who are not civil servants, officials of local self-government, but provide public services (auditors, notaries, appraisers of assets, experts, arbitration managers, independent brokers, members of labour arbitration, arbitrators in the exercise of these functions, other persons specified by law);

c) representatives of public association, research institutions, educational institutions, experts of the relevant qualification who are part of the selection commissions established under the Law of Ukraine "On Civil Service";

3) persons who permanently or temporarily occupy positions related to the implementation of organisational and administrative or administrative and economic duties, or specially authorised to perform such duties in legal entities of private law regardless of organisation and legal form, as well as other persons who are not officials and are performing work or providing services under the contract with the enterprise, organisation in cases prescribed by this law.

Criminal liability of civil servants

According to Article 19 of the Constitution of Ukraine, bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine. These provisions apply to all officials without exception.

Chapter XVII of the Special part of the Criminal Code of Ukraine stipulates the criminal liability for acts (Articles 364-370), which generic object are public relations in the sphere of professional activities related to public services.

These acts belong to the so-called common types of crimes committed in the area of service activity – professional crimes, the immediate target of which are public relations which ensure normal official activity in certain levels of state and public apparatus, and system management of enterprises, institutions and organisations. However, many norms of the Criminal Code Ukraine establish liability for so-called special types of official crimes (e.g., Articles 162, 210, 238, 351, 371-373, 375), commitment of which is also caused by the official position of the subject, but their main object is other public relations (personal human and citizens' rights and freedoms, economic activities, property, interests of justice, etc.).

Civil liability of civil servants

Pursuant to Article 56 of the Constitution of Ukraine, everyone has the right to compensation, at the expense of the state or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority.

This right is an important guarantee of the realisation of the principle of state responsibility before people for its activity (Article 3 of the Constitution of Ukraine). However, this rule is only a general legal principle that is further developed in Articles 1173–1177 of the Civil Code of Ukraine.

Analysing these articles, it should be emphasised that liability for damage caused to natural or legal person by unlawful decisions, action or inaction of state authority, authority of the Autonomous Republic of Crimea or local self-government in the exercise of their powers, by officials and officers of these bodies, and the damage resulting from the adoption by these bodies of a legal act that was declared illegal and cancelled, is compensated by the state, the Autonomous Republic of Crimea or local self-government, regardless of the guilt of these bodies and their officials or officers.

After reimbursement of the damage inflicted by the official or officer, the state shall have the right for counterclaim to this official only in case his/her actions are were recognised to be criminal by the court verdict that has become effective (Article 1191.3 of the Code).

In view of the above it can be concluded that public officials are accountable for their actions both under law and in practice, and Ukraine's current legislative framework makes it possible to combat corruption effectively and to promote effective system of public administration.

IV. The law and the individual

1. Is there individual access to your Court (direct / indirect) against general acts/individual acts? Please briefly explain the modalities/procedures.

According to Article 147 of the Constitution of Ukraine, the Constitutional Court of Ukraine decides on the issues of conformity of laws and other legal acts to the Constitution of Ukraine and provides the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

According to Article 43 of the Law of Ukraine “On the Constitutional Court of Ukraine” citizens of Ukraine, foreigners, stateless persons and legal entities have the right to apply to the Constitutional Court of Ukraine with a constitutional appeal for the official interpretation of the Constitution of Ukraine and laws of Ukraine. The grounds for a constitutional appeal concerning official interpretation of the Constitution of Ukraine and laws of Ukraine shall be inconsistent application of provisions of the Constitution of Ukraine or laws of Ukraine by courts of Ukraine, other state bodies, if the subject of the right to constitutional appeal considers it may

lead or has led to violation of his/her constitutional rights and freedoms (Article 94 of the Law).

Article 42 of the Law stipulates that the constitutional appeal shall be a written application to the Constitutional Court of Ukraine on the necessity of official interpretation of the Constitution of Ukraine and laws of Ukraine in order to ensure implementation or protection of the constitutional human and citizen's rights and freedoms as well as the rights of a legal entity.

With the entry into force of the amendments to the Constitution of Ukraine introduced by the Law of Ukraine "On Amendments to the Constitution of Ukraine" (on justice) № 1401-VIII dated June 2, 2016, the Constitutional Court of Ukraine was deprived of the right to the official interpretation of the laws of Ukraine. Instead, according to these amendments the powers of the Constitutional Court of Ukraine were supplemented by a new institute of constitutional complaint.

Thus, the Constitutional Court of Ukraine will resolve the issues on the conformity to the Constitution of Ukraine (constitutionality) of laws of Ukraine upon the constitutional complaint of a person who believes that the law applied in the final judgment in his/her case contradicts the Constitution of Ukraine. The constitutional complaint can be filed in case all other domestic remedies were exhausted (Article 151^1 of the Constitution of Ukraine).

It should be also noted that citizens' appeals (applications, complaints, letters, information, offers, etc.) that are not related to constitutional proceedings, but concern the activity of the Constitutional Court of Ukraine and the resolution of which is attributed to its powers are considered in the order and terms defined by the Law of Ukraine "On Citizens' Appeals" № 393/96-VR dated October 2, 1996.

Citizens' appeals (applications, complaints, letters, information, offers, etc.) which are not related to the activity of the Constitutional Court of Ukraine and the resolution of which is not within its powers shall be sent to the relevant state bodies, institutions and officials, and the author is informed thereon in written. If the appeal does not contain necessary data to provide a meaningful answer, it should be returned to the citizen with the appropriate explanations.

2. Has your Court developed case-law concerning access to ordinary/lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

Justice in Ukraine is administered exclusively by the courts, and the Supreme Court of Ukraine is the highest judicial body of general jurisdiction of Ukraine, which ensures the unity of jurisprudence in the order and manner prescribed by the procedural law (Article 124 of the Constitution of Ukraine, Article 38 of the Law of Ukraine "On the Judicial System and Status of Judges" № 2453-VI dated July 7, 2010).

One of the powers of the Supreme Court of Ukraine is to appeal to the Constitutional Court of Ukraine on the constitutionality of laws and other regulations, as well as the official interpretation of the Constitution of Ukraine.

The Supreme Court of Ukraine has repeatedly appealed to the Constitutional Court of Ukraine with a submission on the official interpretation of the Constitution and laws of Ukraine, as well as on compliance with the Constitution of Ukraine (constitutionality) of various regulations. Based on these applications, the Constitutional Court of Ukraine adopted decisions which are final, not subject to appeal and equally binding.

It should be also noted that the Constitutional Court of Ukraine as a legal entity has the right to appeal and has appealed to the courts of general jurisdiction to resolve the issues within the competence of the courts.

3. Has your Court developed case-law on other individual rights related to the rule of law?

The Constitutional Court of Ukraine in its decisions often refers to the principle of rule of law. The characteristic of the requirements of the principle of rule of law was firstly provided in the Decision of the Constitutional Court of Ukraine № 15-rp/2004 dated November 2, 2004 in the case concerning more lenient punishment.

According to the understanding of the Constitutional Court of Ukraine, the rule of law is the supremacy of statute law in society. The rule of law requires that the state implements it in law-making and law enforcement activities, in particular in the laws that by their content should be permeated with ideas of social justice, freedom, equality and so on. One of the manifestations of the rule of law is that law is not limited by legislation only as one of its forms, but includes other social regulators, including morality, traditions, customs, etc., which legitimised by society and caused by historically achieved cultural level of society. All these elements of law are combined by quality that corresponds to the ideology of justice, the idea of law, which was largely reflected in the Constitution of Ukraine.

Such understanding of law provides no basis for its identification with the a law, which can sometimes be unfair, including the restriction of freedom and equality of individuals. Justice is one of the basic principles of law, it is crucial in defining it as a regulator of social relations, one of the human dimensions of law. Typically justice is seen as an attribute of law, expressed in particular in the equal scale of legal behaviour and proportionality in legal responsibility to an infringement.

In the field of implementation of law, justice is manifested, in particular, in equality of everyone before the law, compliance of crime with punishment, purposes of the legislator and means, elected to achieve them.

Therefore, the Constitutional Court of Ukraine, describing the rule of law principle, considers law not as a statute or a system of normative acts, but as the embodiment of justice.

In its Decision № 3-rp/2003 dated January 30, 2003 in the case on consideration by the court of individual resolutions of investigator and prosecutor, the Constitutional Court of Ukraine, guided by the rule of law principle, held that justice is inherently acknowledged only if it meets the requirements of justice and provides effective restoration of rights.

Based on the motivation of the decisions of the Constitutional Court of Ukraine, one could argue that the rule of law determines the direction of the judiciary to achieve justice and to provide effective protection. Both the trial and the outcome of legal proceedings should be fair and effective.

4. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

Article 8.1 of the Constitution of Ukraine stipulates that the principle of rule of law is recognised and effective in Ukraine.

Based on this principle and on constitutional guarantees of the judicial protection of constitutional rights and freedoms, judicial activity should be aimed at protecting these rights and freedoms from any infringements by ensuring timely and qualitative consideration of specific cases. It should be borne in mind that, under Article 22 of the Constitution human and citizens' rights and freedoms contained therein are not exhaustive.

The rule of law means that the Court should not apply the provisions of a legal act, including the law, if its application is contrary to the constitutional principles of law or violates human and citizens' rights and freedoms. The Court should not also allow interpretation of the law that would unfairly restrict these rights and freedoms.

For example, in its Decision №15-rp/2004 dated November 2, 2004 in the case concerning more lenient punishment, the Constitutional Court of Ukraine noted that the rule of law, as one of the basic principles of a democratic society provides judicial control over interference with the right to freedom of everyone.

The court, guided by the rule-of-law principle, ensures the protection of human and citizen's rights and freedoms guaranteed by the Constitution and Ukrainian legislation as well as the rights and freedoms of legal entities, social interests and those of the state.

The Constitutional Court of Ukraine in the said decision held that Article 69 of the Criminal Code of Ukraine violates one of the fundamental principles of the rule of law, i.e. justice because it makes impossible either equal application of punishment that is lower than the lower limit under the Special Part of the Code or the application of another, more lenient punishment not specified in the article as a punishment for a specific type of crime, to minor crimes which degree of social hazard is much less than that of felonies, serious crimes and medium offences.

The law may not put persons committing petty crimes in a more disadvantageous position than those who have committed graver crimes. Inability to apply more lenient punishment means the lack of opportunity for the court to implement the principle of justice by way of sentence customisation.

The principle of fairness were complied with in Article 44 of the Criminal Code of Ukraine of 1960, which provided that the court, considering the exceptional circumstances of the case and the personality of the perpetrator and recognising the need of application of the punishment that is lower than the lower limit prescribed by law for such offense, or the application of another, more lenient punishment could allow such mitigation with obligatory indication of motives. Application by the court

of more lenient punishment was carried out with regard to all persons who have committed crimes, regardless of the severity of the crime.

Based on the above and other reasons, the Constitutional Court of Ukraine held that the provisions of Article 69.1 of the Criminal Code of Ukraine do not meet the Constitution of Ukraine (unconstitutional), which prevents application of the punishment that is lower than the lower limit prescribed by law for such offense to persons who have committed minor offense.

Consolidation of the principle of the rule of law may have direct or indirect nature in the laws of Ukraine. It is directly enshrined in some codification of legislation: the Code of Criminal Procedure of Ukraine (Article 8); the Code of Administrative Procedure (Article 8).

The Code of Administrative Procedure, apart from that the court in resolution of the case is guided by the principle of the rule of law, provides for a ban on denial of consideration and resolution of administrative case on the grounds of incompleteness, ambiguity, inconsistency or lack of legislation which regulates contentious relationship (Article 8).

Based on the above, it can be concluded that the principle of the rule of law as a general concept is applied in the absence of specific fundamental rights or guarantees in the Constitution and laws of Ukraine.