

**Conference of European Constitutional Courts  
XIIth Congress**

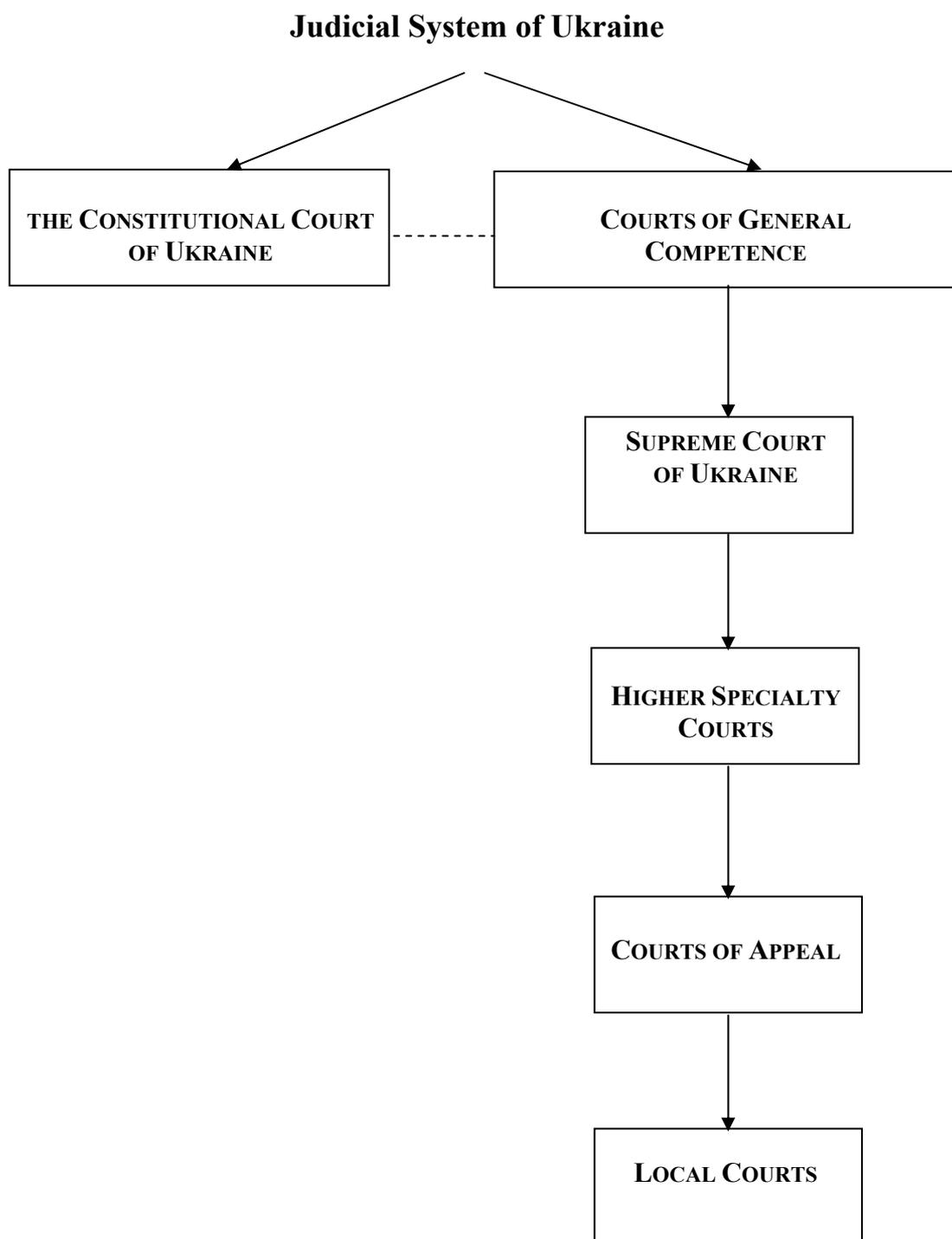
*The relations between the Constitutional Courts  
and the other national courts,  
including the interference in this area  
of the action of the European courts*

**Report of  
the Constitutional Court  
of Ukraine**

# I. The Constitutional Court, the other courts and the constitutionality review

## A. Organization of judicial system of the state

### 1. Judicial System



**POWERS OF THE CONSTITUTIONAL COURT OF UKRAINE  
as a single authority of the constitutional competence in Ukraine**

The objective of the Constitutional Court of Ukraine is providing guarantee of supremacy of the Constitution as the Fundamental Law of the state in the entire territory of Ukraine.

The Constitutional Court of Ukraine adopts resolutions and gives conclusions in cases concerning:

1) constitutionality of laws and other legislative acts passed by the Supreme Council of Ukraine, acts issued by the President of Ukraine, the Cabinet of Ministers of Ukraine, legal acts adopted by the Supreme Council of the Autonomous Republic of Crimea;

2) compliance of the Constitution with applicable international treaties and agreements of Ukraine or the international treaties and agreement submitted to the Supreme Council for approval of their obligatory nature;

3) adherence to the constitutional procedures of investigation and consideration of the case of removal of the President of Ukraine from his office in accordance with the impeachment procedures;

4) formal interpretation of the Constitution of Ukraine;

5) compliance of the draft law on introduction of changes and amendments in the Constitution of Ukraine with provisions of articles 157 and 158 of the Constitution of Ukraine. In accordance with the above provisions of the Constitution of Ukraine, it may not be changed if the proposed changes envisage cancellation or limitation of human rights and liberties, or if the changes aim at liquidation of independence of Ukraine or violation of its territorial integrity

The Constitutional Court of Ukraine may not be changed in conditions of martial law or the state of emergency.

A draft law on introduction of changes in the Constitution of Ukraine which was considered by and not passed by the Supreme Council of Ukraine may be submitted to the Supreme Council of Ukraine not earlier than upon expiration of one year from the day of approval of resolution concerning this draft law.

The Supreme Council of Ukraine within the term of its authority may not modify same provisions of the Constitution of Ukraine twice.

Issues concerning lawfulness of legal acts approved by governmental bodies, governmental bodies of the Autonomous Republic of Crimea as well as the bodies of local self-government, and other matters in competence of the courts of general jurisdiction do not fall within the competence of the Constitutional Court of Ukraine.

**Powers of the Supreme Court of Ukraine**  
as the supreme judicial body within the system of  
courts of general jurisdiction

Ensures equal application of law by courts of general jurisdiction in accordance with procedures prescribed by law of Ukraine.

Within its competence and in accordance with the procedures of appeal, review rulings and rulings made by courts of general jurisdiction and cases in accordance with newly revealed circumstances in accordance with procedures established by legal procedure law; considers cases within its competence assigned by the Constitution of Ukraine.

Considers and generalizes judicial practices, analyzes judicial statistics and present explanations to judges concerning the issues of applying law arising during trial cases.

Decides within the limits of its competence on the issues flowing from the international treaties and agreements of Ukraine.

Exercise powers and authorities provided by law:

Judges of the Supreme Court of Ukraine are elected by the Supreme Council of Ukraine for perpetual service. The Chief Justice of the Supreme Court of Ukraine is elected by the Plenum of the Supreme Court by secret balloting.

For organization of work on consideration and revision of cases, which do not fall within the competence of the higher specialty courts, chambers of justice are functioning at the Supreme Court of Ukraine.

**Higher Specialty Courts**  
are the higher judicial authorities of specialty courts

Powers and Authorities of the  
Higher Specialty Courts

Higher specialty courts act as courts of appeal instance in respect to courts of appeal and local courts. In cases provided for by law, they also act as courts of appeal instance in respect to rulings (rulings) of courts of appeal approved in the first instance, and review cases in accordance with newly revealed circumstances.

Study and generalize judicial practices, give recommendations and explanations concerning the issues of applying law, and exercise other powers and authorities assigned to them by law.

Higher specialty courts are composed of judges elected for this purpose by the Supreme Council of Ukraine.

The higher specialty courts may form presidiums as consultative and advisory panel at the chief justice of a specialty court.

## Courts of Appeal

Courts of appeal act in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol.

Courts of appeal consist of judges elected for perpetual service by the Supreme Council of Ukraine, or appointed by the President of Ukraine for five-year term of their offices.

## Powers and Authorities of Courts of Appeal

Courts of appeal act as courts of appeal instance in respect to rulings of local courts, and as courts of the first instance in respect to the cases of administrative, criminal and civil laws assigned to their competence by law, and review cases in accordance with newly revealed circumstances.

Courts of appeal study and generalize judicial practices and exercise other powers and authorities assigned to them by law.

Courts of appeal may form presidiums as consultative and advisory panel at the chief justice of a court of appeal.

Courts of appeal may form appropriate chambers of justice for consideration of cases in accordance with procedures of appeal, and chambers of justice for consideration of cases in the first instance.

## Local Courts

Local courts act within the limits of districts, cities (except for towns within a district), city districts, several; districts or a district and city at the same time unless the law provides otherwise.

## Powers and Authorities of Local Court

Local court considers in the capacity of the court of the first instance and due to newly revealed circumstances civil, economic, administrative, criminal and other cases when prescribed by law, except for the cases, which fall within the competence of other courts.

In cases provided by law, local court considers cases in administrative delinquency.

Local court studies and generalizes judicial practices and exercise other powers and authorities assigned to them by law.

## Courts Martial of Ukraine

### Court Martial System

Garrisons Courts  
as Local Courts

Courts Martial  
of Regions

Navy Courts as  
courts of appeal

## Powers and Authorities of Courts Martial

Courts martial of Ukraine considers:

1) all cases in crimes committed by military servicemen of the Armed Forces, Frontier Troops, Security service of Ukraine and other military units as well as military registrants during conduct of military training camps;

2) all cases concerning espionage;

3) cases of violation of established procedures of performance of military service committed by members of commanders of work farms;

4) cases of crimes committed by certain categories of persons determined by law if Ukraine;

5) cases of administrative delinquency of military servicemen;

6) cases initiated in results of complaints of military servicemen against unlawful acts of military officials or bodies of military command.

7) cases of honor and dignity protection parties to which are military servicemen or military organizations.

8) other cases related to protection of rights and liberties of military servicemen and other citizens, as well as rights and legal interests of military units, institutions and organizations.

The law of Ukraine also envisages creation of International Commercial Court of Arbitration and Maritime Arbitration Commission.

**International Commercial Court of Arbitration**  
(hereinafter referred to as ICCA)

The ICCA is a permanent arbitration institution (court of arbitration), which performs its activities in accordance with the Law of Ukraine "On International Commercial Arbitration".

the following issues may be submitted for  
consideration by the ICCA

Disputes related to contractual or other civil legal relations arising during accomplishment of foreign trade and other types of foreign economic relations if a commercial enterprise of at least one party involved in dispute locates abroad;	disputed between enterprises with foreign investment and international associations and organizations established in the territory of Ukraine; disputes between their participants and disputes with other legal entities of Ukraine.
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ICCA also accepts for initiation of proceedings disputes related to its competence by international treaties and agreements of Ukraine.

**Maritime Arbitration Commission**  
(hereinafter referred to as MAC)

MAC is an independent permanent arbitration institution (court of arbitration), which performs its activities in accordance with the Law of Ukraine "On International Commercial Arbitration".

MAC resolves disputes arising from contractual and other civil legal relations and relate to merchant navy activities regardless of whether the parties of such relations are entities of Ukrainian or foreign law, or foreign law only.

MAC accepts for consideration disputes provided availability of agreement between the parties concerning such consideration by the MAC, as well as the disputes, which must be submitted for consideration by the MAC in pursuance of international treaties and agreements.

## **2. The Constitutional Court**

*2. What is the place of the Constitutional Court of Ukraine in the judicial organization of the state? If it is part of judiciary, what is its status within the judiciary?*

In accordance with the Constitution of Ukraine, legal proceedings in Ukraine are executed by the Constitutional Court of Ukraine and courts of general jurisdiction (article 124 of the Constitution of Ukraine).

However, the Constitutional Court of Ukraine is not a part of the system of common law courts since it is the only body authorized to exercise review over constitutionality of laws, other regulatory and legal acts, formal interpretation of the Constitution and laws of Ukraine. With to these authorities, the Constitutional Court of Ukraine is the only body of constitutional competence in Ukraine, whose main objective is guarantee of the supremacy of the Constitutions as the Fundamental Law in the entire territory of Ukraine.

Therefore, the Constitutional Court of Ukraine is, in essence, an independent integral part of the judiciary of Ukraine.

### ***B. The respective competence of the constitutional court and the other courts in the area of constitutionality review***

#### **1. Review of laws and other acts**

##### ***§ 1. Type of review***

*3. What acts (of domestic law and international law) are reviewed by the constitutional court in relation to the higher standards that are the Constitution, the principles of constitutional value and the provisions of international law?*

The Constitutional Court of Ukraine acts exclusively within the limits of its competence as prescribed by articles 150, 151, 159 of the Constitution and article 13 of the Law of Ukraine "On Constitutional Court of Ukraine".

In accordance to the above-mentioned articles, the Constitutional Court is authorized to determine consistency or inconsistency with provisions of the Constitution of Ukraine of acts issued by higher bodies of our state. This applies to laws and legislative acts passed by the legislative body of our state – the Supreme Council of Ukraine, decrees and directives of the President of Ukraine, resolutions and orders of the higher body of the executive power – the Cabinet of Ministers of Ukraine as well as the legislative acts passed by the Autonomous Republic of Crimea.

The Constitutional Court established adherence of applicable international laws and treaties or those submitted for approval by the Supreme Council of Ukraine, i.e. for their recognition and obligatory fulfillment by Ukraine, to prescriptions of the Fundamental Law.

*4. Is this competence exclusive? If not, which are the other competent courts in this area? How about the other acts and rulings?*

Such competence is the exclusive one, and any other judicial body may not perform functions assigned to the Constitutional Court of Ukraine.

Review over the compliance of judicial rulings in specific cases with provisions of the Constitution of Ukraine is within the competence of court of general jurisdiction which has all appropriate authorities for this purpose.

*5. Are the reviews exercised by the Constitutional Court prior or subsequent?*

There are two types of constitutional review fixed in legislative procedures (articles 150, 151, 159 of the Constitution and article 13 of the Law of Ukraine "On Constitutional Court of Ukraine"), namely: **subsequent**, in relation to check of compliance of laws and other legal acts with the Constitution of Ukraine, and **prior and subsequent**, in respect to international treaties and agreements of Ukraine submitted to the Supreme Council of Ukraine for its approval and recognition as obligatory for execution. Prior constitutional review is performed also in respect to the draft laws on introduction of changes in the Constitution of Ukraine.

*6. Is the review carried out by the Constitutional Court an abstract or a concrete review?*

The reviews exercised by the Constitutional Court have both abstract and specific nature.

## **§ 2. Referrals the Constitutional Court**

### **a. Types of referral**

*7. How can the constitutional court be accessed (action for annulment, preliminary question, constitutional appeal, etc.)? How many cases have there been for each type of referral?*

The Law of Ukraine "On Constitutional Court of Ukraine" as of October 16, 1996 (article 38) envisages two forms of referral to the Constitutional Court: constitutional referral and constitutional referral.

Constitutional referral means a written referral submitted to the Constitutional Court of Ukraine with solicitation of recognition of legal act (its certain provisions) as unconstitutional, on determination of constitutionality of an international agreement or treaty, or on the necessity of formal interpretation of the Constitution of Ukraine and the laws of Ukraine as well as on obtaining conclusion concerning constitutionality of the procedures of investigation and consideration of the case of removal of the President of Ukraine in accordance with impeachment procedures.

Constitutional referral means a written referral to the Constitutional Court of Ukraine on the necessity of formal interpretation of the Constitution of Ukraine and laws of Ukraine for ensuring of realization or protection of human and citizen's rights and liberties, as well as rights of an entity.

## **b. Actions for annulment**

*8. Does direct recourse exist to the constitutional court against statutes? And against other regulations and acts?*

Law of Ukraine provided for a possibility of direct recourse to the Constitutional Court of Ukraine with written referral of recognition of legal act (its individual provisions) as unconstitutional in the form of constitutional referral at the same time limiting the circle of holders of the right to such direct referral.

*9. Who can bring such actions and within what time limit?*

The following persons may refer to the Constitutional Court of Ukraine against unconstitutionality of:

- Laws and other legal acts of the Supreme Council of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Supreme Council of the Autonomous Republic of Crimea: President of Ukraine, at least forty five people's deputies of Ukraine, the Supreme Court of Ukraine, the Ombudsman of the Supreme Council of Ukraine, the Supreme Council of the Autonomous Republic of Crimea;
- Compliance with the Constitution of Ukraine of applicable international agreements and treaties of Ukraine, or the international agreements and treaties submitted to the Supreme Council of Ukraine for its approval of their obligatory nature: the President of Ukraine, the Cabinet of Ministers of Ukraine.

Citizens of Ukraine and legal entities are not entitled to refer to the Constitutional Court of Ukraine.

Law of Ukraine does not prescribed timeframes for filing referrals to the Constitutional Court of Ukraine except for conclusions related to constitutionality of acts in elections, all-Ukrainian referendum or local referendum in the Autonomous Republic of Crimea. Constitutional referral on the above listed issues may be submitted to the Constitutional Court of Ukraine not later than within one month from the date of formal publication of the date of set for elections, all-Ukrainian referendum or local referendum in the Autonomous Republic of Crimea.

*10. Can the constitutional court suspend statutes or other regulations and acts?*

The Constitutional Court of Ukraine may not suspend the effect of laws or other regulatory acts.

## **c. Preliminary issues — plea of unconstitutionality**

*11. Which courts can refer cases to the constitutional court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of 'court'?*

Not every judicial body may refer directly to the Constitutional Court of Ukraine on the issues of recognition of a legal act as unconstitutional. According to the Constitution of Ukraine, this

is an exclusive privilege of the Supreme Court of Ukraine to refer cases to the Constitutional Court of Ukraine with constitutional referrals, if a judicial body is under its competence. The Supreme Court of Ukraine is entitled to referral to the Constitutional Court of Ukraine with constitutional referral in case of disputes related to its powers, if the latter believes that law establishing the powers of the Supreme Court of Ukraine is incompliant with the Constitution of Ukraine.

At arising disputes in the process of proceedings by courts of general jurisdiction (district or regional) concerning the constitutionality of a form of the statute applied by the court, the proceeding are suspended, and the court submits its motivated ruling (ruling) to the Supreme Court of Ukraine. The Supreme Court of Ukraine referral to the Constitutional Court of Ukraine with constitutional referral concerning establishment of compliance of laws and other legal acts passed by the Supreme Council of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine legal acts passed by the Supreme Council of the Autonomous Republic of Crimea with the Constitution of Ukraine. Under such circumstances, the proceedings in the case is commenced and promptly considered by the Constitutional Court of Ukraine.

*12. Are the courts obliged to put the question?*

In accordance with article 150 of the Constitution of Ukraine and articles 40, 83 of the Law of Ukraine "On Constitutional Court of Ukraine ", in the event of arising of a dispute concerning the constitutionality of a legal act within the process of general legal proceeding, the Supreme Court of Ukraine as a holder of the right to constitutional referral shall be bound to refer to the Constitutional Court of Ukraine on establishment of compliance of this act with the Constitution of Ukraine.

*13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the constitutional court by a ruling of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?*

Since it is only the Supreme Court of Ukraine, that may referral to the Constitutional Court of Ukraine with prejudicial matters as the higher judicial authority of general jurisdiction, the law does not provide for a possibility (through appeals, protests, applications or otherwise) to prevent from submission of the matter to the Constitutional Court of Ukraine.

*14. What is the procedure for referral to the constitutional court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised ex officio? In that case, are the discussions on the question reopened?*

Procedures of referral to the Constitutional Court of Ukraine are provided for in the Law of Ukraine "On Constitutional Court of Ukraine" and the Regulations of the Constitutional Court of Ukraine. Referrals concerning constitutionality of a legal act are accomplished on the basis of the Constitution of Ukraine by governmental bodies authorized for this purpose.

Holders of the right to constitutional referral submit their constitutional referrals to the Constitutional Court of Ukraine setting forth their arguments and stating unconstitutionality of laws of other legal acts. Holder of the right to constitutional referral is free in choosing wordings and justification concerning unconstitutionality of the legal act.

Constitutional referrals are submitted to the Constitutional Court of Ukraine as postal correspondence or are delivered directly to the Secretariat of the Constitutional Court of Ukraine and are registered on the day of their receipt.

Cases of unconstitutionality of a legal act may not be submitted to the Constitutional Court of Ukraine ex officio.

*15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?*

In accordance with the Law of Ukraine "On Constitutional Court of Ukraine", in its constitutional referral, the Supreme Court of Ukraine as a holder of the right to constitutional referral has to explicitly and unambiguously state its position concerning unconstitutionality of laws and legal acts.

The Supreme Court of Ukraine, while referring to the Constitutional Court of Ukraine must present its legal justification of statements concerning unconstitutionality of a legal act or its individual provisions.

Other judicial bodies are not authorized to directly formally bring up issues of unconstitutionality of a legal act.

*16. Is there a screening procedure that allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (nonsuit, quick reply, demurrer, evident unfoundedness, identity or similarity of questions which the constitutional court has already answered)? What is the proportion of cases screened in this way?*

In accordance with the Law of Ukraine "On Constitutional Court of Ukraine", each referral concerning constitutionality of a legal act submitted to the Constitutional Court of Ukraine is subject to procedures of check of its compliance with requirements provided for in the Constitution of Ukraine and the law of Ukraine.

Reasons for dismissal of initiation of proceedings at the Constitutional Court of Ukraine are:

- unavailability of the right to constitutional referral in accordance with the Constitution of Ukraine and the Law of Ukraine "On Constitutional Court of Ukraine";
- inconsistency of the constitutional referral with requirements of the Constitution of Ukraine and the Law of Ukraine "On Constitutional Court of Ukraine";
- issues brought up in the constitutional referral are beyond the competence of the Constitutional Court of Ukraine.

Constitutional referrals, which do not comply with requirements provided for by the Law of Ukraine "On Constitutional Court of Ukraine", are not considered by the Constitutional Court of Ukraine, with appropriate information on such dismissal of the holder of the right to constitutional referral.

Within its framework, the Constitutional Court of Ukraine forms boards of judges for the purpose of consideration of issues concerning initiation of proceedings in cases under constitutional referrals, and board of judges for consideration of issues concerning initiation of proceedings in cases under constitutional referrals. The board of judges of the Constitutional Court of Ukraine for consideration of cases under constitutional referrals

passes by majority of votes the procedural resolution on initiation of proceedings in the case at the Constitutional Court of Ukraine or on dismissal of such proceedings.

In the event of passing by the Board of Judges of procedural resolution on dismissal of initiation of proceedings, the secretary of the Board of Judges submits the materials to the Chief Justice of the Constitutional Court of Ukraine for consideration of the case at the sitting of the Constitutional Court of Ukraine. The Constitutional Court of Ukraine at its sittings considers the issues of initiation of proceedings in cases at the Constitutional Court of Ukraine in the event when the Board of Judges of the Constitutional Court of Ukraine passes the procedural resolution on dismissal of initiation of the proceedings.

This resolution contains the name of the Board of Judges, constitutional referral being considered, its matter, motives underlying the resolution. The approval is passed by majority of votes of the judges present at the sitting of the Board of Judges. The procedural resolution on refusal to initiate the proceedings at the Constitutional Court of Ukraine approved by the Constitutional Court of Ukraine shall be deemed final.

In case when the Constitutional Court of Ukraine makes ruling, gives conclusion or passed the procedural resolution on dismissal of initiation of constitutional proceedings in the case, the holder of the right to constitutional referral is furnished the notice on such appropriate resolution signed by the chief of the Secretariat of the Constitutional Court of Ukraine. Copies of appropriate ruling, conclusion or procedural resolution of the Constitutional Court of Ukraine are attached to this notice.

In case when the holder of the right to the constitutional referral appeal against the notice on inconsistency of its referral with established requirements sent to such holder by the chief of the Secretariat of the Constitutional Court of Ukraine, its letter with attached notice issued by the Secretariat are submitted to a judge of the Constitutional Court of Ukraine for revision of justification of the ruling made by the chief of the Secretariat.

Subsequent deliberately unfounded referrals to the Constitutional Court of Ukraine shall be deemed as abuse of appropriate right.

Constitutional referral may be recognized by the Constitutional Court of Ukraine as urgent. Consideration of such referral may not exceed one month.

The Secretariat of the Constitutional Court of Ukraine during 1997 – May 1, 2001 returned to the holder of the right to constitutional referral 84 referrals, 12 442 replies were sent to individuals and legal entities, 20 constitutional referrals and referrals were returned by judges, in respect to 223 referrals the resolution was approved to initiate constitutional proceedings.

*17. What is the import of the considerations of unconstitutionality given by the court that puts the question (court a quo)? Must the constitutional court take these considerations into account or can it ignore them? Can it raise, ex officio or at the request of the parties, the arguments of unconstitutionality not envisaged by the court a quo or is it restricted by the ruling of referral? Can the constitutional court review regulations not intended by the preliminary question yet linked thereto?*

The Supreme Court of Ukraine may refer to the Constitutional Court of Ukraine about recognition of a legal act or its individual provisions as unconstitutional. In other words, the range of considerations may apply to the entire legal act or its individual provisions. The

Constitutional Court of Ukraine can consider all formally brought forward matters of unconstitutionality of laws or legal acts and give the appropriate legal treatment.

In case, when within the proceedings process under constitutional referral or constitutional referral, there is inconsistency with the Constitution of Ukraine of other legal acts (their individual provisions) except for those concerning which the proceedings were initiated, and which affect approval of resolution or conclusion, the Constitutional Court of Ukraine recognizes such acts (their individual provisions) as unconstitutional.

*18. Are all aspects, both in law and in fact, of the action pending before the court a quo referred to the constitutional court?*

In case of consideration of constitutional referral of the Supreme Court of Ukraine concerning constitutionality of laws of Ukraine and other legal acts, the Constitutional Court of Ukraine should take into consideration only aspects in law of the case.

*19. Can the constitutional court dismiss the question on the grounds that it is not useful to the settlement of the action brought before the court a quo?*

Except for the Supreme Court of Ukraine, other courts of general jurisdiction are not authorized to refer directly to the Constitutional Court of Ukraine with constitutional referrals. The Constitutional Court of Ukraine may dismiss prejudicial issue only on the grounds of appropriate law of Ukraine: in case when the constitutional referral does not comply with requirements established by the Constitution of Ukraine and the Law of Ukraine "On Constitutional Court of Ukraine". The Constitutional Court of Ukraine may not groundlessly dismiss consideration of the constitutional referral only due to that it cannot help in settlement of the dispute.

*20. Can the Constitutional Court formulate the issue alternatively in order to make it clearer or identify the topics for debates on constitutionality explicitly? If yes, how is it done?*

The Constitutional Court of Ukraine may not on its own initiative alternate the issue of unconstitutionality formulated in constitutional referral. Certain changes in wording in the case are admissible only subject to uniting or dividing the constitutional proceedings.

*21. Can the constitutional court reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?*

The Constitutional Court of Ukraine must conserve the formulation of the act contested by the Supreme Court of Ukraine.

*22. Must the constitutional court adhere to the interpretation of the reviewed regulation given by the court a quo?*

The consequences of introduction of changes in the contested regulatory act may be as follows:

- adoption of procedural resolution on dismissal of initiation of constitutional proceedings;
- termination of proceedings in the case if they were previously initiated.

*23. Can the parties before the court a quo or third parties (individuals, institutions, other courts, etc.) participate (voluntarily or compulsorily) in the procedure before the constitutional court? If so, in what way? How are they informed of the procedure before the constitutional court? Can one intervene before the constitutional court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court a quo to put the preliminary question?*

Participants of constitutional proceedings are holders of the right to constitutional referral, their representatives and authorities and officials, witnesses, experts and translators involved in the participation of consideration of the case by the Constitutional Court of Ukraine.

The Board of Judges of the Constitutional Court of Ukraine during preparation of the case, the Constitutional Court of Ukraine in the process of proceedings in the case may have the right to summon officials, experts, witnesses, representatives according to law, and persons duly authorized by individuals whose participation in the process should secure the objectivity and completeness of consideration of the case.

Participants of the constitutional proceedings may submit written explanations, which are attached to materials of the case, and get familiarize themselves with explanations of other participants of the proceedings.

A person may not appeal to the Constitutional Court of Ukraine solely on the grounds of that similar case was already considered in the court of general jurisdiction and the latter had to bring up the prejudicial issue. This cannot be deemed reason to appeal in accordance with the Law of Ukraine "On Constitutional Court of Ukraine".

*24. Is there a counsel for the defense? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

Participation of a counsel in the constitutional process under the constitutional referral is not envisages in accordance with the Law of Ukraine "On Constitutional Court of Ukraine".

Prosecution is performed in the area of competence of courts of general jurisdiction and does not apply to the area of constitutional competence. Therefore, there is no prosecution in the Constitutional Court of Ukraine.

*25. Does the withdrawal of suit before the court a quo or the death of a party before the same court subsequent to the ruling of referral have an impact on the progress of the constitutional action?*

Constitutional referral may be withdrawn in accordance with the written application of the holder of the right (the Supreme Court of Ukraine), which earlier referred to the Constitutional Court of Ukraine, at any time prior to consideration at plenary meeting of the Constitutional Court of Ukraine.

The Law of Ukraine "On Constitutional Court of Ukraine" does not provide for other reasons for termination of initiation of the constitutional proceedings including death of one of the parties or renunciation of suit earlier filed to the court of general jurisdiction.

Procedural approval on termination of proceedings in the case under the constitutional referral being revoked is accepted at the sitting of the Constitutional Court of Ukraine.

**d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde etc.)**

*Subject of the constitutional appeal to the Constitutional Court*

26. *What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the facts of the case?*

The notion of constitutional appeal as appeal of a person against unconstitutionality of legal act does not exist in Ukraine. Instead, in Ukraine on the constitutional level, there established the right of individuals to constitutional referral concerning formal interpretation of the Constitution of Ukraine and laws of Ukraine.

*Allowability of the appeal*

27. *Who can refer an appeal to the constitutional court? How?*

Holder of the right to constitutional referral on the issues of formal interpretation of the Constitution of Ukraine and laws of Ukraine are citizens of Ukraine, foreigners and stateless persons.

28. *Is appeal to the constitutional court only possible once all other avenues of appeal have been tried?*

Filing constitutional appeal to the Constitutional Court of Ukraine is possible in conditions of ambiguous application of provisions of the Constitution of Ukraine or laws of Ukraine by courts of Ukraine, other governmental bodies and are or may be a consequence of violation of constitutional rights and liberties of individuals. The notion of "ambiguous application" does not imply application of all possible national judicial remedies.

*Screening*

29. *Is there a screening procedure, which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundedness, etc.)? What is the proportion of cases screened in this way*

In accordance with the Law of Ukraine "On Constitutional Court of Ukraine", each appeal concerning constitutionality of a legal act submitted to the Constitutional Court of Ukraine is subject to procedures of check of its compliance with requirements provided for in the Constitution of Ukraine and the law of Ukraine.

Reasons for dismissal of proceedings at the Constitutional Court of Ukraine are:

- unavailability of the right to constitutional referral in accordance with the Constitution of Ukraine and the Law of Ukraine "On Constitutional Court of Ukraine";
- inconsistency of the constitutional referral with requirements of the Constitution of Ukraine and the Law of Ukraine "On Constitutional Court of Ukraine";
- issues brought up in the constitutional referral are beyond the competence of the Constitutional Court of Ukraine.

Constitutional referrals, which do not comply with requirements provided for by the Law of Ukraine "On Constitutional Court of Ukraine", are not considered by the Constitutional Court of Ukraine, with appropriate information on such dismissal of the holder of the right to constitutional referral.

### *Parties*

*30. Does the plaintiff participate in the procedure before the constitutional court? If so, in what form? What about the other parties? Can or must certain public authorities intervene in the proceedings?*

Participants of the constitutional proceedings are holders of the right to constitutional referral and bodies or officials which approved or who signed legal acts, constitutionality of which being contested, or which required a formal interpretation. Participants of constitutional proceedings are also persons involved on the initiative of the Constitutional Court of Ukraine in participation in the case consideration (witnesses, experts, translator etc.).

Verbal hearings are mandatory requirement in the case when direct hearing of participants of the constitutional proceedings is needed for comprehensive investigation of the case circumstances and delivery of a justified ruling at the plenary meeting of the Constitutional Court of Ukraine.

Verbal hearings can be arranged subject to referral of the holder of the right to constitutional referral and bodies, officials involved in adoption of legal acts, constitutionality of which is contested or required formal interpretation.

Participants of constitutional proceedings have equal procedural rights and duties.

*31. Does the process envisage participation of a counsel? If yes, in what form? Is there a prosecution in the Constitutional Court?*

In case of consideration by the Constitutional Court of Ukraine of the constitutional referral concerning formal interpretation of the Constitution of Ukraine and laws of Ukraine, the counsel may participate in the case as a legal representative of the person or a person authorized by the holder of the right to constitutional referral.

Prosecution in Ukraine does not apply to the area of constitutional competence. Therefore, there is no prosecution in the Constitutional Court of Ukraine.

*32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?*

In accordance with the Constitution of Ukraine, determination of competence of judicial bodies relates to exclusive authority of the body of the legislative power, the Supreme Council of Ukraine.

However, in case of dispute between higher specialty courts or other governmental bodies concerning the scope and borders of their authority, the possibility of clarification on competence of these courts by the Constitutional Court of Ukraine by means of formal interpretation of the Constitution of Ukraine and laws of Ukraine may not be excluded.

## **II. Links of the Constitutional Court with other courts**

### ***A. The organic link***

*34. What are the organic links between the constitutional court and the other national courts (conditions of admission, appointment procedure, etc.)?*

The Constitutional Court of Ukraine consists of eighteen judges of the Constitutional Court of Ukraine. President of Ukraine, the Supreme Council of Ukraine and congress of judges of Ukraine appoint six judges each to the Constitutional Court of Ukraine.

The Congress of judges of Ukraine on proposal of the congress delegates determines nominees to the positions in the Constitutional Court of Ukraine by open ballot majority of the delegates present.

Persons appointed judges of the Constitutional Court of Ukraine are candidates, who obtained majority of votes of elected delegates of the Congress of judges of Ukraine in result of secret ballot.

If the voting is held concerning the nominees whose number exceeds the quota for appointment to position of judges of the Constitutional Court of Ukraine, the candidates who gained the most of the votes compared to other candidates for the positions shall be deemed elected.

In case of termination of authorities of a judge of the Constitutional Court of Ukraine appointed by the congress of judges of Ukraine, the Congress of judges of Ukraine is to appoint another person for this position within three-month term.

Based on the results of voting, the chairman of the congress and the secretary sign resolution of the Congress of judges of Ukraine on appointment of judges of the Constitutional Court of Ukraine.

## ***B. The procedural link***

*34. Are there procedural links between the constitutional court and the court referring the case to it or against which the appeal was lodged (for example, a judge-to-judge meeting in order to clarify or refine the question)? If so, what use is made of this option?*

The Constitutional Court of Ukraine in respect to preparation to consideration of the case may referral to as judicial body. However, it cannot clarify or facilitate elaboration of clearer wording of the issue which has been submitted by the judicial body.

## ***C. The functional links***

### ***§ 1. Review and its effects***

*35. Do the rulings of the constitutional court always constitute a binding precedent for the other courts?*

In accordance with the Constitution of Ukraine, the Constitutional Court of Ukraine rules and makes conclusions which equally binding in the entire territory of Ukraine, final and may not be appealed.

*36. What are the review methods of the constitutional court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretative rulings, interpretation reserves, annulment of a judicial ruling, establishment of deficiencies, establishment of limited validity, etc.)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).*

The following methods of review are in competence of the Constitutional Court of Ukraine:

- declaration of constitutionality;
- declaration of unconstitutionality;
- ruling (conclusion) on interpretation of the Constitution of Ukraine.

Declaration of constitutionality or declaration of unconstitutionality of a legal act or its individual provisions is performed by means of adoption by the Constitutional Court of Ukraine of a resolution, which is approved in accordance with results of consideration of constitutional referral. The Constitutional Court of Ukraine may recognize the entire legal act or its individual part as unconstitutional. The resolution of the Constitutional Court of Ukraine indicates, which legal acts or their provisions are recognized unconstitutional or which ones are consistent with the Constitution of Ukraine and, therefore, constitutional.

Reasons for approval by the Constitutional Court of Ukraine of the resolution concerning unconstitutionality of legal acts entirely or individual parts of them are:

- inconsistency with the Constitution of Ukraine;
- violation of procedures established by the Constitution of Ukraine for their consideration, approval or coming into effect;
- exceeding of constitutional authorities at their approval.

The Constitutional Court of Ukraine gives its conclusions in cases:

- of formal interpretation of Constitution and laws of Ukraine;
- concerning consistency of draft laws on introduction of changes to the Constitution of Ukraine with requirements of articles 157 and 158 of the Constitution of Ukraine;
- on compliance of the Constitution of Ukraine with applicable international agreements and treaties of Ukraine or the international agreements and treaties submitted to the Supreme Council of Ukraine for their recognition as obligatory and binding;
- concerning adherence to the constitutional procedure of investigation and consideration of the case of removal of the President of Ukraine from his office in accordance with the impeachment procedures.

The Constitutional Court of Ukraine may rule on dismissal of the case in essence by means of adoption of ruling on dismissal of initiation under constitutional referral or appeal. Procedural resolution adopted by the Constitutional Court of Ukraine at its sitting on dismissal is final.

Dismissal by the Constitutional Court of Ukraine of the case may be motivated by gaps in law. Considering the issues on appointment by the president of Ukraine of first deputies, deputies of ministers and deputy heads of other central governmental bodies of Ukraine, the Constitutional Court of Ukraine stated that the issue on appointment of the above officials has not been regulated by the Constitution of Ukraine. This issue should be regulated by law; however, such law has not been passed. Referring to constitutional principal of separation of powers, the Constitutional Court of Ukraine was based on that it couldn't interfere with activity of the lawmakers and fill in the gaps in law. In accordance with these motives, the Constitutional Court of Ukraine ruled on termination of proceedings in this case.

*37. What are the legal effects of the rulings of the constitutional court (ex nunc. ex tunc; erga omnes, inter partes; etc.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts - statutory or individual - or judicial rulings, etc. (for example, is there a re-examination procedure)? Can the constitutional court limit or sustain the effects in time?*

Laws, other legal acts or their individual provisions declared unconstitutional, become invalid from the day of ruling of the Constitutional Court of Ukraine on their unconstitutionality.

The Constitutional Court of Ukraine may review this ruling only subject to reopening of he proceedings. The Constitutional Court of Ukraine reopens the proceedings at opening of new circumstances in the case, which were not considered last time but existed during the time of such consideration and ruling or giving conclusions in the case.

Rulings of the Constitutional Court of Ukraine related to determination and exercising of constitutional powers by governmental bodies is binding upon only those bodies.

Rulings of the Constitutional Court of Ukraine related to the issues of interpretation of the Constitution of Ukraine and laws of Ukraine concerning constitutional rights and liberties are binding upon both governmental bodies and individual persons.

*38. Is the authority of the rulings of the constitutional court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in implementing the rulings of the constitutional court?*

Within the mechanism of implementation of constitutional jurisdiction, an important role belongs to the component of implementation of the rulings namely, their being binding upon governmental institutions, bodies of local self-government, their officials and all citizens of Ukraine. Article 150 of the Constitution of Ukraine prescribes that rulings of the Constitutional Court of Ukraine are obligatory for their implementation in the territory of Ukraine and may not be appealed.

The Law of Ukraine "On Constitutional Court of Ukraine" (article 70) established procedures of implementation of rulings and conclusions of the Constitutional Court but, unfortunately, concrete provisions of executive procedures are not prescribed. According to the above article, when necessary the Constitutional Court of Ukraine may specify in its ruling or conclusion procedures and term of implementation and charge appropriate governmental institutions with duties on implementation of the rulings or adherence to the conclusions. The Constitutional Court of Ukraine is also entitled to demand from these institutions written confirmation of execution of the ruling or conclusion. Failure to implement the rulings, writs, demands or prohibitions of the Constitutional Court of Ukraine entails accountability in accordance with law but, at the same time, the applicable law does not prescribe such accountability.

Therefore, mechanisms of direct implementation of rulings of the Constitutional Court of Ukraine, their legislative support, mechanisms of their realization do not exist.

Cases of opposition from the part of governmental institutions and courts concerning implementation of rulings of the Constitutional Court of Ukraine have not been detected. According to information of the Supreme Court of Ukraine, the higher court in the system of general jurisdiction, at proceeding on civil cases by courts of general jurisdiction in respect to rulings (conclusions) issued by the Constitutional Court of Ukraine, difficulties and problems did not occur including the issues of implementation of the rulings (conclusions).

## ***§ 2. Interpretation by the Constitutional Court***

### **a. The case law of other courts accepted by the Constitutional Court in the exercise of its own jurisdiction**

*39. Does the constitutional court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the constitutional court, however, give another interpretation?*

The only body in Ukraine, which formally interprets the Constitution of Ukraine and laws of Ukraine, is the Constitutional Court of Ukraine. Other specialty courts of Ukraine may not formally interpret the Constitution of Ukraine and laws of Ukraine.

The living law, created by specialty courts of Ukraine does not exist in Ukraine. At making its decisions on a case, the Constitutional Court of Ukraine is not bound to adhere to interpretation of the challenged act, provided by higher specialty courts of Ukraine.

**b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction**

*40. Is the interpretation of the constitutional rules and the legislative rules given by the constitutional court binding on the other courts? What happens in case of non-adherence to the interpretation of the constitutional court?*

Formal interpretation of the Constitution of Ukraine and laws of Ukraine by the Constitutional Court of Ukraine is binding upon all courts of Ukraine. However, Ukrainian law does not establish accountability for failure to adhere to rulings and conclusions of the Constitutional Court of Ukraine.

*41. Can the constitutional court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of "living law"? If so, what use is made of this option?*

Formal interpretation of the Constitution of Ukraine and laws of Ukraine given by the Constitutional Court of Ukraine may differ from interpretation of these laws given in rulings of courts of general jurisdiction or in explanatory guidelines issued by the Plenum of the Supreme Court of Ukraine. Positions explained by the Constitutional Court of Ukraine in the case of formal interpretation of the Constitution of Ukraine and laws of Ukraine are binding upon courts for their implementation at issuing courts rulings. The courts may not interpret differently these acts (their provisions). The Constitutional Court of Ukraine is not bound to separately stipulate that any interpretation different from that the Constitutional Court of Ukraine provided is not compliant with the Constitution of Ukraine.

*42. What are the effects for the other courts of a purely interpretative decision?*

In Ukraine, all courts including higher specialty courts are bound to adhere to interpretations of law made by the Constitutional Court of Ukraine as set forth in its rulings and conclusions.

### **III. The interference of the European courts**

#### ***A. The constitutional court and the other courts vis-à-vis the European Convention on Human Rights and the case law of the European Court of Human Rights***

*43. Is the constitutional court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the constitutional court?*

The Constitutional Court of Ukraine is not under jurisdiction of the European Court of Human Rights. The Constitutional Court of Ukraine juridically is not subordinated to the European Court of Human Rights. Jurisdiction of the Constitutional Court of Ukraine is limited by the area of constitutional review – guaranteeing supremacy of the Constitution of Ukraine.

Objective of the European Court of Human Rights is protection of adherence to and implementation of the European Convention on Human Rights by the Council of Europe member states. Since the jurisdiction of the European Court of Human Rights does not directly apply to the Constitutional Court of Ukraine, the activities of the former do not affect the activities of the Constitutional Court of Ukraine.

In accordance with the European Convention on Human Rights, rulings of the European Court of Human Rights impose obligations upon a state as a subject of international law. Rulings of the European Convention on Human Rights may obtain validity on the national level for Ukraine in case of their implementations.

*44. Can the court base its decision on a provision of the European Convention and, in doing so, possibly deviate from the action of the constitutional court?*

Upon issuing of a ruling, the Constitutional Court of Ukraine is based, beside the Constitution of Ukraine, on provisions of the European Convention on Human Rights. In doing so, the Constitutional Court of Ukraine may not ignore its own rulings while referring to provisions of the European Convention on Human Rights.

Within the limits of its jurisdiction, the Constitutional Court of Ukraine in principle does not reject the opportunity, in consideration of a case concerning human rights and liberties as provided for in the Constitution of Ukraine, refer to provisions of the European Convention on Human Rights. Taking into consideration article 9 of the Constitution of Ukraine, interpretation of the Constitution of Ukraine and laws of the part concerning human rights and liberties can be carried out by the Constitutional Court of Ukraine with due consideration of provisions of the European Convention on Human Rights.

Based on article 68 of the Law of Ukraine "On Constitutional Court of Ukraine", the only possible case for the Constitutional Court of Ukraine to step aside from earlier issued rulings is opening of a new proceedings in case at occurrence of new circumstances which were not previously considered (the European Convention on Human Rights cannot be qualified as a new circumstance in case not previously known to the Constitutional Court of Ukraine).

*45. Must a lawsuit have been brought before the constitutional court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?*

Appeal to the Constitutional Court of Ukraine is not a necessary precondition for referral to the European Court of Human Rights.

Implementation of provisions of the European Convention on Human Rights in Ukraine is carried out by administrative bodies and courts of general jurisdiction (criminal, civil and administrative). A higher court within the system of courts of general jurisdiction is the Supreme Court of Ukraine. Appeal to the European Court of Human Rights is possible in after having tried all internal avenues of appeal, i.e. consideration of the case by the Supreme Court of Ukraine.

***B. The Constitutional Court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities***

*46. Is the constitutional court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the constitutional court?*

Since Ukraine is not a member of the European Union, case law of the Court of the European Community does not apply to the judicial system of Ukraine and, consequently, to the Constitutional Court of Ukraine. Law case of the Court of the European Community does not affect the activities of the Constitutional Court of Ukraine.

*47. Has the constitutional court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the constitutional court and the other courts in case of non-application of national regulations that are incompatible with Community law?*

The Constitutional Court of Ukraine has not yet referred cases to the Court of Justice of the European Communities.

*48. Do national courts have a choice between referring cases to the constitutional court and to the Court of Justice of the European Communities?*

National courts do not have such choice.