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# **CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES**

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The Constitutional Court of Ukraine*

## **I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT**

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The sole body of legislative power in Ukraine – the Verkhovna Rada of Ukraine (the Parliament) appoints and dismisses one-third of the membership (six judges) of the Constitutional Court of Ukraine (Articles 85.1.26, 148.2 of the Constitution of Ukraine, Article 5 of Law of Ukraine “On the Constitutional Court of Ukraine”).

According to Article 126.1 of the Constitution of Ukraine the independence and immunity of judges are guaranteed by the Constitution and laws of Ukraine. In the Decision No. 1-rp/2004 dated December 1, 2004 (the case on judicial independence as an integral part of their status) the Constitutional Court of Ukraine emphasised that *“the judicial independence is provided first and foremost by the special procedure of their election or appointment and dismissal”*.

The Judge of the Constitutional Court of Ukraine may be dismissed only on grounds set forth in Article 126.5 of the Constitution of Ukraine. The judge is dismissed from office by the body that elected or appointed him or her in the event of: the expiration of the term for which he or she was elected or appointed; the judge's attainment of the age of sixty-five; the impossibility to exercise his or her authority for reasons of health; the violation by the judge of requirements concerning incompatibility; the breach of oath by the judge; the entry into legal force of a verdict of guilty against him or her; the termination of his or her citizenship; the declaration that he or she is missing or dead; the submission by the judge of a statement of resignation or of voluntary dismissal from office. The authority of the judge terminates in the event of his or her death. The Constitution makes no provision for such ground for a dismissal of a judge of the Constitutional Court of Ukraine as revocation.

- 2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?**

The State ensures funding and proper conditions for the operation of courts and judges. Expenditures for the maintenance of courts are allocated separately in the State Budget of Ukraine (Article 130.1 of the Constitution of Ukraine). The Constitutional Court of Ukraine in the Decision No. 7-rp/2010 dated March 11, 2010 (the case on financial provision of operation of courts) held that *“the law on the State Budget for the respective year is to envisage annual expenditure for maintenance of*

*every court of all jurisdictions and levels under separate lines”* (paragraph six of item 3.3. of the motivation part).

Article 130 of the Constitution of Ukraine is further developed in Article 31 of the Law of Ukraine “On the Constitutional Court of Ukraine” which defines that financing of the Constitutional Court of Ukraine shall be provided for in a separate item of the State Budget of Ukraine.

Proposals concerning the amount of financing of the Constitutional Court of Ukraine as well as the draft of the relevant budget estimate shall be submitted by the Chairperson of the Constitutional Court of Ukraine to the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine when the State Budget of Ukraine for each following year is drafted.

The budgetary process starts from drafting the budget of the Constitutional Court of Ukraine for the following year.

According to the effective legislation and the Rules of Procedure of the Constitutional Court of Ukraine the draft budget of the Court for the following year is elaborated by the Secretariat of the Constitutional Court, then it is examined by the Court’s Standing Commission on Budget and Personnel. After that the Chairperson of the Constitutional Court of Ukraine informs the Court on the state of preparation of proposals concerning amount of financing of the Constitutional Court of Ukraine for further submission to the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine when the State Budget of Ukraine is drafted and also submits a draft of budgetary estimate for each year for approval by the Constitutional Court of Ukraine (paragraphs two and three of item 1 §2 of the Rules of Procedure of the Constitutional Court of Ukraine). The Constitutional Court of Ukraine at its sessions considers proposals concerning amount of financing the Constitutional Court of Ukraine, approves a draft of budgetary estimate for each financial year and also hears the information of the Chairperson of the Constitutional Court of Ukraine on the use of budget assignments (paragraphs seven and nine of item 1 §7 of the Rules of Procedure of the Constitutional Court of Ukraine).

The Chairperson of the Constitutional Court of Ukraine submits the draft of budgetary estimate of the Constitutional Court of Ukraine to the Cabinet of Ministers of Ukraine (the Government) and the Verkhovna Rada of Ukraine (the Parliament). The submitted proposals may be discussed and specified at the Ministry of Finance of Ukraine, the Cabinet of Ministers of Ukraine, at budget hearings of the Committees of Verkhovna Rada of Ukraine with the participation of the Chairperson of the Constitutional Court of Ukraine, the Deputy Chairpersons, senior officials of the Court’s Secretariat.

As provided for in Article 21 of the Law of Ukraine “On the Constitutional Court of Ukraine” the Chairperson of the Constitutional Court of Ukraine within the amount of

allocated budgetary funds manages these funds independently in accordance with the budget estimate approved by the Constitutional Court of Ukraine, which identifies main directions of expenditures in accordance with the Court's needs.

Pursuant to the Decision of the Constitutional Court No. 6-rp/99 dated June 24, 1999 (the case on courts' financing) *“the budget items of expenditures of the State Budget of Ukraine for the provision of judicial authority are protected directly by the Constitution of Ukraine and can not be reduced by the bodies of executive or legislative power lower the level, which ensures comprehensive and independent administration of justice as provided by the law.*

*The Constitution of Ukraine defined the secure mechanism of financing the judicial authority, which is compulsory both for the Verkhovna Rada of Ukraine, which is vested with the authority to approve the State Budget of Ukraine, introduce amendments thereto and exercise control over its implementation; (Article 85.1.4) and for the Cabinet of Ministers of Ukraine, which ensures the implementation of the State Budget of Ukraine”(Article 116.6)”* (paragraphs seven and eight of item 2 of the motivation part).

**3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

According to Articles 75 and 85.1.3 of the Constitution of Ukraine the adoption of laws is the exclusive competence of the Verkhovna Rada of Ukraine (the Parliament).

Under Article 89 of the Constitution of Ukraine in order to perform the work of legislative drafting, to prepare and conduct the preliminary consideration of issues ascribed to its authority as well as to exercise control functions according to the Constitution of Ukraine the Verkhovna Rada of Ukraine establishes the Committees of the Verkhovna Rada from People's Deputies of Ukraine. Relevant consultations with the Constitutional Court of Ukraine concerning introduction of amendments to the law regulating its activities may be held during the preparation of relevant draft law in the respective committee of the Parliament. However, in practice number of such consultations is limited due to the fact that the adopted law can potentially be the subject of constitutional review.

**4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

The authority of the Constitutional Court of Ukraine comprises deciding on issues of conformity with the Constitution of Ukraine of laws, particularly (Article 150 of the Constitution of Ukraine). In accordance with Articles 83.5, 92.1.21 of the Constitution of Ukraine, the provisions of the Decisions of the Constitutional Court of Ukraine No.

4-rp/2008 dated April 1, 2008 (case on the Rules of Procedure of the Verkhovna Rada of Ukraine) and No. 16-rp/2008 dated September 17, 2008 (case on coalition of deputy factions in the Verkhovna Rada of Ukraine) *“the Rules of Procedure which regulate the organisation and the activity of the Verkhovna Rada of Ukraine shall be adopted exclusively as a Law of Ukraine and according to the procedure of its consideration, approval and taking the effect established by Articles 84, 93, 94 of the Constitution”*. The effective Rules of Procedure of the Verkhovna Rada of Ukraine were approved by the Law of Ukraine No. 1861-VI dated February 10, 2010.

The Constitutional Court of Ukraine is, therefore, empowered to control the constitutionality of the Rules of Procedure of the Verkhovna Rada of Ukraine as the Law of Ukraine.

According to Article 117.1 the Cabinet of Ministers of Ukraine (the Government), within the limits of its competence, issues resolutions and orders that are mandatory for execution.

One of the Constitutional Court of Ukraine powers is to decide on issues of conformity with the Constitution of Ukraine of acts of the Cabinet of Ministers of Ukraine.

The Rules of Procedure of the Cabinet of Ministers of Ukraine which define the procedure of meetings of the Cabinet of Ministers of Ukraine, preparation and adoption of decisions, other procedural issues related to its activities (Article 4.3 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”) was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 950 dated July 18, 2007.

Thereby the Constitutional Court of Ukraine has the authority to control the constitutionality of the Rules of Procedure of the Cabinet of Ministers of Ukraine (the Government).

##### **5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.**

According to Article 150.1 of the Constitution of Ukraine the authority of the Constitutional Court of Ukraine comprises deciding on issues of conformity with the Constitution of Ukraine (constitutionality) of laws and other legal acts of the Verkhovna Rada of Ukraine; acts of the President of Ukraine; acts of the Cabinet of Minister of Ukraine; legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.

The analysis of prescriptions of the mentioned norm indicates that the subject of constitutional control depending on hierarchy of acts are the following categories of acts:

- 1) laws;
- 2) bylaws, notably:
  - legal acts of the Verkhovna Rada of Ukraine (resolutions, declarations etc.), among them *“normative acts of the Presidium of the Verkhovna Rada of Ukraine, which follows from the special status of the Presidium of the Verkhovna Rada of Ukraine in the system of state power of Ukraine before February 14, 1992”* (paragraph two of item 3 of the motivation part of the Decision No. 2-zp dated June 23, 1997). *“The main features of the normative nature of legal acts are the uncertainty of their effect in time and recurrence of their application”* (paragraph one item 6 of the motivation part of the Decision No. 7-rp/2002 dated March 27, 2002);
  - acts of the President of Ukraine, decrees and orders. *“The Constitutional Court of Ukraine has the authority to decide on issues of conformity with the Constitution of Ukraine (constitutionality) of legal acts of the Verkhovna Rada of Ukraine and the President of Ukraine without reference to either their normative and legal or individual legal nature”* (paragraph five of item 4 of the motivation part of the Decision No. 7-rp/2002 dated March 27, 2002);
  - acts of the Cabinet of Ministers of Ukraine (resolutions and decrees);
  - legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea, in particular, *“the Verkhovna Rada of the Autonomous Republic of Crimea within its competence adopts decisions and resolutions, therefore by using the term “the Law of the Autonomous Republic of Crimea” as a form of normative legal act the Verkhovna Rada of the Autonomous Republic of Crimea has exceeded its authority”* (paragraph one of item 5 of the motivation part of the Decision No. 4-rp/1998 dated March 25, 1998 and the Decision No. 7-rp/1998 dated June 2, 1998).

In addition, the Constitutional Court of Ukraine examines legal acts of the aforesaid state bodies which formally lost their effect but had established legal relationship, which exist during consideration of the case by the Constitutional Court. *“It follows from the provisions of Article 58 of the Constitution of Ukraine, that laws and other normative legal acts have no retroactive force in time, which means that the force of laws applies only to those legal relationship which arose after the laws or other normative legal acts entered into force”* (paragraph one of item 5 of the motivation part of the Decision No. 1-zp dated May 13, 1997) *“and does not apply to legal relationship which arose and ended before they entered into force”* (paragraph one of item 4 of the motivation part of the Decision No. 3-rp/2001 dated April 5, 2001).

The following do not fall under the jurisdiction of the Constitutional Court of Ukraine: *“legal acts of the Verkhovna Rada of Ukraine of regulatory nature”* (Ruling of the Constitutional Court of Ukraine No. 1-u dated February 28, 2001), *“legal acts, which do not generate legal consequences and do not cause any legal relationship:”* (Ruling of the Constitutional Court of Ukraine No. 11-u dated January 12, 2000), *“legal acts, which are not listed in Article 150.1.1 of the Constitution of Ukraine”*

(Ruling of the Constitutional Court of Ukraine No. 49-u dated July 13, 2000 and Ruling of the Constitutional Court of Ukraine No. 41-u dated September 11, 2003), *“legal acts which lost their legal force due to the termination of the legal relationship which had been established as the result of their effect”* (Decision of the Constitutional Court of Ukraine No. 15-rp dated November 14, 2001).

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court’s decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Under Article 150.2 of the Constitution of Ukraine the Constitutional Court of Ukraine adopts the decisions that are mandatory for execution throughout the territory of Ukraine, that are final and shall not be appealed.

Article 152.2 of the Constitution of Ukraine states that the laws and other legal acts, or their separate provisions, declared unconstitutional, lose legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality.

According to the legal position of the Constitutional Court of Ukraine stated in the Decision of the Constitutional Court No. 15-rp/2000 dated December 14, 2000 (case on the procedure of execution of decisions of the Constitution of Ukraine), the provision of Article 150.2 of the Constitution of Ukraine concerning execution of decisions of the Constitution of Ukraine should be understood as reading that *“laws, other legal acts or their separate provisions declared unconstitutional pursuant to such decisions may not be applied as such that lost their legal effect in accordance with Article 152.2 of the Constitution of Ukraine from the date of adoption by the Constitution of Ukraine of the decision on their unconstitutionality”* (paragraph 4 item 4 of the motivation part).

In accordance with the Law of Ukraine “On the Constitutional Court of Ukraine” copies of decisions and opinions of the Constitutional Court of Ukraine shall be sent next working day after their official promulgation to the subject of the right to constitutional petition or constitutional appeal upon whose initiative the case was considered, to the Ministry of Justice of Ukraine as well as to the state body that adopted the legal act which was the subject of consideration by the Constitutional Court of Ukraine (Article 70.1 of the Law).

Where necessary, the Constitutional Court of Ukraine may determine in its decision or opinion the procedure and terms of their execution and oblige appropriate state bodies to ensure execution of the decision or adherence to the opinion (Article 70.2 of the Law).

Declaration of a norm to be unconstitutional results not only in this norm losing its effect. It requires from the state body, which adopted the unconstitutional act (mostly from the Verkhovna Rada of Ukraine) to take measures to fill in the gap in legislation that appeared even if it is not directly mentioned in the Decision. The Parliament is obliged to do the same if a legislative gap was determined during consideration of a case on official interpretation, when the Constitutional Court pays attention to it.

For example, by the Decision No. 7-zp dated December 23, 1997 (case on Accounting Chamber) in which the Constitutional Court of Ukraine recognised unconstitutional a number of the provisions of the Law of Ukraine “On the Accounting Chamber of Ukraine” the Court obliged the President of Ukraine and the Verkhovna Rada of Ukraine to ensure the execution of this Decision. Also by the Decision No. 1-rp/2007 dated May 16, 2007 (case on dismissal of a judge from administrative position) the Constitutional Court of Ukraine recommended that the Parliament should immediately regulate the issue on the appointment of a judge to the position of court chairman, court deputy chairman and his/her dismissal from this position at the legislative level. In the Decision No. 2-rp-2007 dated June 12, 2007 (case on establishing political parties in Ukraine) the Constitutional Court of Ukraine drew attention to the necessity to bring the provisions of the Law “On Political Parties in Ukraine” in accordance with the Code on Administrative Proceedings. In the other Decision No. 6-rp/2007 dated July 9, 2007 (case on social guarantees of citizens) the Constitutional Court of Ukraine stated: *“to draw attention of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine to the necessity of observance of the provisions of Articles 1, 3, 6, 8, 19, 22, 95, 96 of the Constitution, Articles 4, 27, 38.2 of the Budget Code of Ukraine while drafting, adopting and bringing into effect the Law “On the State Budget of Ukraine”*. In the Decision No. 6-rp/2008 dated April 16, 2008 (case on adoption of the Constitution and laws of Ukraine at a referendum) the Court stressed the need to bring the existing legislation of Ukraine on holding referenda in accordance with the effective Constitution.

Also, in accordance with Article 70.3 of the Law of Ukraine “On the Constitutional Court of Ukraine” the Constitutional Court of Ukraine has the right to demand from bodies stated in this Article a written confirmation of execution of the decision or adherence to the opinion of the Constitutional Court of Ukraine.

**6. b) Parliament can invalidate the constitutional court’s decision: specify conditions.**

Pursuant to Articles 6.2 and 19.2 of the Constitution of Ukraine bodies of legislative, executive and judicial power exercise their authority within the limits established by the Constitution and in accordance with the laws of Ukraine and they 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 Constitution of Ukraine does not empower the Parliament to declare invalid decisions of the Constitutional Court of Ukraine.

According to Article 150.2 of the Constitution of Ukraine the Constitutional Court adopts decisions that are mandatory for execution throughout the territory of Ukraine, that are final and shall not be appealed.

**7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

The Constitutional Court of Ukraine cooperates with many bodies of state power. Such cooperation implies the implementation of the conjunct authorities, set forth by the Constitution of Ukraine and laws of Ukraine, as well as individual powers of each state body. It's noteworthy to point out certain elements of cooperation with the Parliament (the Verkhovna Rada of Ukraine), the Head of State (the President of Ukraine), the Government (the Cabinet of Ministers of Ukraine), the judicial bodies (courts, the Supreme Court of Ukraine), and other state bodies.

**I. The cooperation between the Constitutional Court of Ukraine and the Verkhovna Rada of Ukraine**

**The cooperation with the Verkhovna Rada of Ukraine may be divided into two main directions: the cooperation with the Verkhovna Rada of Ukraine as the sole body of legislative power in Ukraine and cooperation with People's Deputies of Ukraine as subjects of constitutional petitions to the Constitutional Court of Ukraine concerning constitutionality and official interpretation.**

1. In accordance with Article 85.1.26, Article 148.2 of the Constitution of Ukraine, Article 5 of the Law of Ukraine "On the Constitutional Court of Ukraine" the Verkhovna Rada of Ukraine appoints and dismisses one-third of the members of the Constitutional Court of Ukraine (six judges).

2. Judge of the Constitutional Court of Ukraine shall take oath at a session of the Verkhovna Rada of Ukraine with the participation of the President of Ukraine, the Prime Ministers of Ukraine and the Chairperson of the Supreme Court of Ukraine or persons who perform their duties (Article 17.2 of the Law of Ukraine "On the Constitutional Court of Ukraine", Article 217 of the Rules of Procedure of the Verkhovna Rada of Ukraine).

3. The Verkhovna Rada of Ukraine is the subject of the right to constitutional petition on the following issues:

- conformity of a draft law on introducing amendments to the Constitution of Ukraine with the requirements of the provisions of Articles 157 and 158 of the Constitution of Ukraine (Article 159 of the Constitution of Ukraine, Articles 13, 41 of Law of Ukraine “On the Constitutional Court of Ukraine”);
- violation of the Constitution or laws of Ukraine by the Verkhovna Rada of the Autonomous Republic of Crimea (Article 85.1.28 of the Constitution of Ukraine, Articles 13, 41 of Law of Ukraine “On the Constitutional Court of Ukraine”).

4. The Verkhovna Rada of Ukraine is also the subject of the right to constitutional petition on issues of observance of the constitutional procedure of investigation and consideration of case of the removal of the President of Ukraine from office in order of impeachment (Articles 111, 151 of the Constitution of Ukraine, Articles 13, 41 of Law of Ukraine “On the Constitutional Court of Ukraine”). Granting by the Verkhovna Rada of Ukraine of such conclusion is the obligatory constituent of the procedure of impeachment.

The participation of the Constitutional Court of Ukraine in this procedure is aimed at providing the constitutional procedure of investigation and consideration of case of impeachment.

In order to create the preconditions for the adoption of the mentioned conclusion by the Constitutional Court of Ukraine, Judges of the Constitutional Court of Ukraine (not more than three persons) are invited to the hearing of the special temporary investigative commission related to the investigation it conducts (Article 175 of the Rules of Procedure). Upon their appeal they are given the floor at the meeting of the special temporary investigative commission for comments concerning violations of the constitutional procedure of investigation.

Upon obtainment of the relevant conclusion of the Constitutional Court of Ukraine it is immediately announced by the Chairperson at the earliest plenary session of the Verkhovna Rada of Ukraine and is given to the People’s Deputies of Ukraine (Article 186 of the Rules of Procedure).

5. The Verkhovna Rada of Ukraine approves the State Budget of Ukraine (Article 85.1.4 of the Constitution of Ukraine), which provides for financing of the Constitutional Court of Ukraine (Article 31 of Law of Ukraine “On the Constitutional Court of Ukraine”).

6. Not less than 45 People’s Deputies of Ukraine are the subject of the constitutional petition on issues of conformity with the Constitution of Ukraine (constitutionality) of

the laws of Ukraine 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 of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 105 cases upon the constitutional petitions of People’s Deputies of Ukraine and has given opinions in 19 cases upon appeals of the Verkhovna Rada of Ukraine.

## **II. The cooperation between the Constitutional Court of Ukraine and the President of Ukraine**

1. In accordance with Articles 106.1.22, 148.2 of the Constitution of Ukraine, Article 5 of the Law of Ukraine “On the Constitutional Court of Ukraine” the President of Ukraine appoints and dismisses one-third of the members of the Constitutional Court of Ukraine (six judges). Furthermore, Judge of the Constitutional Court of Ukraine shall take oath at a session of the Verkhovna Rada of Ukraine with the participation of the President of Ukraine, the Prime Minister of Ukraine and the Chairperson of the Supreme Court of Ukraine or persons who perform their duties (Article 17.2 of the Law of Ukraine “On the Constitutional Court of Ukraine”, Article 217 of the Rules of Procedure of the Verkhovna Rada of Ukraine).

2. The President of Ukraine is the subject of the right to constitutional petition on the following issues:

- the conformity with the Constitution of Ukraine (constitutionality) of the laws of Ukraine and other legal acts of the Verkhovna Rada 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”);
- the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, or the international treaties submitted to the Verkhovna Rada of Ukraine for granting consent on their binding nature (Article 151 of the Constitution of Ukraine, Articles 41, 87 of the Law of Ukraine “On the Constitutional Court of Ukraine”).
- the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 150 of the Constitution of Ukraine, Articles 13, 41 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

As of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 49 cases upon the constitutional petitions of the President of Ukraine.

3. Article 104 of the Constitution of Ukraine envisages that the Chairperson of the Constitutional Court of Ukraine swears in the newly-elected President of Ukraine.

The procedure of swearing in the oath is determined by the Rules of Procedure of the Verkhovna Rada of Ukraine, approved by the Law of Ukraine No. 1861-IV dated February 10, 2010.

Pursuant to these Rules of Procedure taking of oath by the newly-elected President of Ukraine to the Ukrainian people is an obligatory condition to assume office of the President of Ukraine (Article 163).

According to Article 164 of the Rules of Procedure the President of Ukraine is taking oath at a solemn session of the Verkhovna Rada of Ukraine which is held at the session hall of the Verkhovna Rada unless otherwise decided by the Verkhovna Rada of Ukraine.

The responsibilities of the Chairperson of the Verkhovna Rada of Ukraine (or the First Deputy Chairperson of the Verkhovna Rada of Ukraine) (Article 166 of the Rules of Procedure of the Verkhovna Rada) include:

- opening of the solemn session of the Verkhovna Rada of Ukraine;
- giving the floor to the Chairperson of the Central Election Commission of Ukraine (in case of his absence – Deputy Chairperson of the Central Election Commission of Ukraine) for announcement of the results of the elections of the President of Ukraine;
- inviting the Chairperson of the Constitutional Court of Ukraine to the tribune and calling on him to swear in the newly-elected President of Ukraine.

The responsibilities of the Chairperson of the Constitutional Court of Ukraine (Article 166 of the Rules of Procedure of the Verkhovna Rada) include:

- to report on meeting of all constitutional requirements by the newly-elected President of Ukraine on the issues of the incompatibility and lack of any other reasons which makes impossible taking of oath;
- to invite the newly-elected President of Ukraine to the tribune;
- handing in the text of the oath to the Ukrainian people to the President of Ukraine;
- after the newly-elected President of Ukraine takes his oath the Chairperson of the Constitutional Court of Ukraine announces that the newly-elected President of Ukraine has taken the oath to the Ukrainian people according to Article 104 of the Constitution of Ukraine and assumed the office;
- to pass the text of the oath to the Ukrainian people signed by the newly-elected President of Ukraine to the Chairperson of the solemn session at the Verkhovna Rada of Ukraine.

### **III. The cooperation between the Constitutional Court of Ukraine and the Cabinet of Ministers of Ukraine**

1. According to Article 116.6 the Cabinet of Ministers elaborates the draft law on the State Budget of Ukraine. In its turn, the draft of the budget of the Constitutional Court of Ukraine, approved at the Court's session, is submitted by the Court's Chairperson to the Cabinet of Ministers of Ukraine. Before the draft law on the State Budget of Ukraine is introduced to the Verkhovna Rada of Ukraine, some provisions of the draft budget, as a rule, are being corrected and updated at the Ministry of Finance of Ukraine, the Cabinet of Ministers of Ukraine, at the budgetary hearings at the Committees of the Verkhovna Rada of Ukraine with the participation of the Chairperson of the Constitutional Court of Ukraine, his Deputies, senior officials of the Court's Secretariat.

2. The Cabinet of Ministers of Ukraine is the subject of the right to constitutional petition on the following issues:

- the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, or the international treaties submitted to the Verkhovna Rada of Ukraine for granting consent on their binding nature (Article 151 of the Constitution of Ukraine, Articles 41, 87 of the Law of Ukraine "On the Constitutional Court of Ukraine", Article 36 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine");
- the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 150 of the Constitution of Ukraine, Articles 13, 41 of the Law of Ukraine "On the Constitutional Court of Ukraine", Article 38 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine").

As of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 3 cases upon the constitutional petitions of the Cabinet of Ministers of Ukraine.

### **IV. The cooperation between the Constitutional Court of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea**

The Verkhovna Rada of the Autonomous Republic of Crimea is the subject of the right to constitutional petition on the following issues:

- the conformity with the Constitution of Ukraine (constitutionality) of the laws of Ukraine 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");

- the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 150 of the Constitution of Ukraine, Articles 13, 41 of the Law of Ukraine “On the Constitutional Court of Ukraine”, Article 19 of the Constitution of the Autonomous Republic of Crimea, approved by the Law of Ukraine No. 350-XIV dated December 23, 1998).

As of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 3 cases upon the constitutional petitions of the Verkhovna Rada of the Autonomous Republic of Crimea.

#### **V. The cooperation between the Constitutional Court of Ukraine and the Supreme Court of Ukraine**

1. The Congress of Judges of Ukraine appoints and dismisses six judges of the Constitutional Court of Ukraine (Article 148.2 of the Constitution of Ukraine, Article 8 of the Law of Ukraine “On the Constitutional Court of Ukraine”, and Article 123.2.3 of the Law of Ukraine “On Judiciary and Status of Judges”). Furthermore, Judge of the Constitutional Court of Ukraine shall take oath at a session of the Verkhovna Rada of Ukraine with the participation of the President of Ukraine, the Prime Minister of Ukraine and the Chairperson of the Supreme Court of Ukraine or persons who perform their duties (Article 17.2 of the Law of Ukraine “On the Constitutional Court of Ukraine”, Article 217 of the Rules of Procedure of the Verkhovna Rada of Ukraine).

2. The Supreme Court of Ukraine appeals to the Constitutional Court of Ukraine in cases courts of general jurisdiction have any doubts concerning 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”, sub-item 4 item 2 of Article 38 of the Law of Ukraine “On Judiciary and Status of Judges”). Moreover, it is the subject of the right to constitutional petition on the issues of the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 150 of the Constitution of Ukraine, Articles 13, 41 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

As of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 15 cases upon the constitutional petitions of the Supreme Court of Ukraine.

#### **VI. The cooperation between the Constitutional Court of Ukraine and other bodies of state power, bodies of local self-government**

Bodies of state power (except the aforementioned), bodies of local self-government may appeal to the Constitutional Court of Ukraine on the issues of the official interpretation of the Constitution of Ukraine 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”).

As of July 12, 2010 the Constitutional Court of Ukraine has adopted decisions in 31 cases upon the constitutional petitions of bodies of state power and bodies of local self-government.

## **VII. The cooperation between the Constitutional Court of Ukraine and other bodies of state power in the context of preparation of cases for examination**

A Judge of the Constitutional Court of Ukraine shall have the right to request the necessary documents, materials and other information on the matters prepared for consideration by the Collegium of Judges of the Constitutional Court of Ukraine, the Constitutional Court of Ukraine from the Verkhovna Rada of Ukraine, the President of Ukraine, the Prime Minister of Ukraine, the Prosecutor General of Ukraine, judges, bodies of state power, bodies of the Autonomous Republic of Crimea, bodies of local self-government, officials, enterprises, institutions, organisations of all forms of ownership, political parties and other associations of citizens as well as from individual citizens (Article 19 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

The Collegium of Judges of the Constitutional Court of Ukraine during preparation of a case and the Constitutional Court of Ukraine during consideration of a case, shall have the right to request the necessary documents, materials and other information concerning the case from the Verkhovna Rada of Ukraine, the President of Ukraine, the Prime Minister of Ukraine, the Prosecutor General of Ukraine, judges, bodies of state power, bodies of the Autonomous Republic of Crimea, bodies of local self-government, officials, enterprises, institutions, organisations of all forms of ownership, political parties and other associations of citizens as well as individual citizens (Article 54 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

## **II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT**

### **1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

Under Article 6 of the Constitution of Ukraine state power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power; bodies of legislative, executive and judicial power exercise their authority within the limits established by this Constitution and in accordance with the laws of Ukraine.

According to Article 19.2 of the Fundamental Law 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 subjects of state authorities are appropriately empowered by the Constitution of Ukraine and laws of Ukraine.

The implementation of the authorities by a body of state power may be realised in particular, by way of issuance of normative legal acts within the limits of its authority. For example, the Verkhovna Rada of Ukraine adopts laws, resolutions and other acts (Article 91 of the Constitution of Ukraine), The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine (Article 106.3 of the Constitution of Ukraine).

Disputes can arise between the bodies of state power during the implementation of their authorities. The decision on such issues refers to the jurisdiction of the Constitutional Court of Ukraine (Articles 147.1, 150 of the Constitution of Ukraine).

One should point out the following features of the mentioned disputes:

- subjects of the right to constitutional petition on the competence disputes are bodies of state power only, determined in Article 150 of the Constitution of Ukraine (the President of Ukraine; no less than forty-five People's Deputies of Ukraine; the Supreme Court of Ukraine; the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; the Verkhovna Rada of the Autonomous Republic of Crimea);

- these disputes are connected with the implementation of the authorities of bodies of state power by way of issuance of relevant acts;

- the subject of such disputes is the determination of the authorities of the bodies of state power by deciding on issues of conformity with the Constitution of Ukraine or the official interpretation of the acts of the bodies of state power, which stipulate these authorities;

- the acts of the bodies of state power may be declared unconstitutional in the event that they do not conform with the Constitution of Ukraine, or if there was a violation of the procedure for their review, adoption or their entry into force established by the Constitution of Ukraine.

**2. Specify whether the Constitutional Court is competent to resolve such litigation.**

Yes, the Constitutional Court of Ukraine is entitled to decide on the legal disputes of constitutional nature between the public bodies, in particular within deciding on the issues of conformity of laws and other legal acts with the Constitution of Ukraine and providing the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 147.2 of the Constitution of Ukraine).

Article 73 of the Law of Ukraine “On the Constitutional Court of Ukraine” states that the Constitutional Court of Ukraine shall adopt decisions concerning 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. In accordance with Article 73.2 of the Law of Ukraine “On the Constitutional Court of Ukraine” if such acts or separate provisions thereof are recognised as non-conforming with the Constitution of Ukraine (unconstitutional) they shall be declared invalid and lose their legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality.

**3. Which public authorities may be involved in such disputes?**

The issues of constitutionality of relevant acts are considered upon the constitutional petitions of: the President of Ukraine, no less than forty-five People’s Deputies of Ukraine; the Supreme Court of Ukraine; the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; the Verkhovna Rada of the Autonomous Republic of Crimea (Article 150 of the Constitution of Ukraine).

The Constitutional Court of Ukraine shall ensure participation in the constitutional proceedings in a case of representatives of the state bodies which acts are disputed concerning their constitutionality in a constitutional petition (Article 72 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

**4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

The main specific feature in this case is the fact that the disputes regarding competence are presented in this or that way through the appeal by the subject of the

right of the constitutionality of acts adopted by a body of state power or upon the demand of the official interpretation (usually in the systemic connection with the provisions of the Constitution of Ukraine).

Chapter 10 of the Law of Ukraine “On the Constitutional Court of Ukraine” determines the specific features of proceedings in cases concerning constitutionality of legal acts causing disputes regarding authorities of the constitutional bodies of state power of Ukraine, bodies of the Autonomous Republic of Crimea and bodies of local self-government.

According to Article 75 of the abovementioned Law the grounds for a constitutional petition shall be a dispute regarding authorities of the constitutional bodies of state power of Ukraine, bodies of the Autonomous Republic of Crimea and bodies of local self-government if one of the subjects of the right to constitutional petition considers that 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 which establish the authorities of the mentioned bodies do not conform with the Constitution of Ukraine.

According to Article 152 of the Constitution of Ukraine laws and other legal acts, upon the decision of the Constitutional Court of Ukraine, are declared unconstitutional, in whole or in part, in the event that they do not conform to the Constitution of Ukraine, or if there was a violation of the procedure established by the Constitution of Ukraine for their review, adoption or their entry into force.

So the Constitutional Court of Ukraine decides on disputes of the constitutional nature between public bodies of state power of Ukraine that are stated in Article 150 of the Constitution of Ukraine regarding issues on the constitutionality of acts of these bodies, including disputes regarding competence as well as those regarding constitutionality of the relevant act.

For example:

- 1) In the Decision No. 22-rp/2009 dated September 29, 2009 (case on alienation of property of state coal mining enterprises) the Constitutional Court of Ukraine recognised as unconstitutional several provisions of the Resolution of the Cabinet of Ministers of Ukraine “On Prevention of the Crisis Occurrences in the Coal Mining Industry” No. 430 dated April 2, 2009 since by issuing that Resolution the Cabinet of Ministers of Ukraine had exceeded the limits of its authority.
- 2) In the Decision No. 4-rp/2009 dated February 3, 2009 (case upon the authorities of the public authorities of the Autonomous Republic of Crimea concerning exercise of state architectural and construction control) the Constitutional Court of Ukraine declared constitutional the provisions of several laws and of the Decree of the Cabinet of Ministers of Ukraine “On State Duty”.

3) In the Decision No. 9-rp/2003 dated April 17, 2003 (case on elections of the deputies of the Verkhovna Rada of the Autonomous Republic of Crimea) the Constitutional Court of Ukraine recognised as unconstitutional the norms of paragraph seven Article 3 of the Law of Ukraine “On the Elections of the Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea” that restricted the right to run for the elections of the deputies of the Verkhovna Rada of the Autonomous Republic of Crimea for certain categories of citizens which contradicted the Constitution of Ukraine.

**5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

The President of Ukraine, no less than forty-five People’s Deputies of Ukraine, the Supreme Court of Ukraine, the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea may initiate such constitutional proceedings regarding such disputes (they are the subjects of the right to constitutional petition).

**6. What procedure is applicable for the adjudication of such dispute?**

The specific characteristics of the proceedings in such cases are as follows:

- a) the Constitutional Court of Ukraine shall ensure obligatory participation in the constitutional proceedings in a case of representatives of the state bodies which acts are disputed concerning their constitutionality in a constitutional petition (Article 72 of the Law of Ukraine “On the Constitutional Court of Ukraine”);
- b) every abovementioned subject of the right to constitutional petition may apply to the Constitutional Court of Ukraine with a constitutional petition concerning mentioned disputable questions at any stage of constitutional proceedings if it considers that the decision of the Constitutional Court of Ukraine on the case may influence the scope of its authorities (Article 76 of the Law of Ukraine “On the Constitutional Court of Ukraine”);
- c) a conclusion concerning the constitutionality of a legal act which establishes the authorities of the constitutional bodies of state power of Ukraine, bodies of the Autonomous Republic of Crimea and bodies of local self-government shall be provided in the resolution part of the decision of the Constitutional Court of Ukraine (Article 77 of the Law of Ukraine “On the Constitutional Court of Ukraine”).

**7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**

- a) **the Constitutional Court may recognise the interference of one body of state power into the exclusive jurisdiction of another, lack of the authority of the body of state power, which were disputed, and recognise a normative legal act issued by this body to be unconstitutional.**

For example, in the Decision No. 19-rp/2009 dated September 8, 2009 in the case concerning conformity with the Constitution of Ukraine (constitutionality) of item 10 of the Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Social Protection of the Individual Categories of Citizens”, the Constitutional Court of Ukraine has established the availability of the dispute concerning the authorities of the Cabinet of Ministers of Ukraine and mentioned that *“According to the Constitution the fundamentals of social protection, the forms and types of pension provision are determined exclusively by laws of Ukraine (Article 92.1.6). According to the Law “On Mandatory State Pension Insurance” conditions, standards and order of the pension provision are envisaged by the laws on the pension provision; the order of the determination of the pension payments rate is established by this Law only. The provisions of the mentioned Law do not include limitation of the maximum pension rate. The Cabinet of Ministers of Ukraine is authorised to take measures to ensure human and citizen’s rights and freedoms, ensure the implementation of policy, including, in the sphere of social security (Articles 116.2, 116.3 of the Fundamental Law). That means that the Cabinet of Ministers of Ukraine is not empowered to establish the pension rates.*

*Thus, stating the limited rates of the pension provision for the individual categories of citizens in item 10 of the Resolution, the Cabinet of Ministers of Ukraine interfered with the sphere of the exceptional competence of the legislator in defiance of the stipulations of Articles 6.2, 8.2, 19.2, 85.1.3, 92.1.6 of the Constitution of Ukraine” (item 3.2 of the motivation part).*

**b) the Constitutional Court may confirm the authorities of the body of state power, by recognising the provisions of the normative legal act by which such powers were stipulated or the act issued by such body in the process of implementation of its authorities which are disputed as conforming with the Constitution of Ukraine (constitutional).**

As an example there is the Decision of the Constitutional Court of Ukraine No. 9-rp/2002 dated May 21, 2002. The ground for consideration of this case was the availability of the dispute concerning conformity with the Constitution of Ukraine (constitutionality) of some provisions of the Law of Ukraine “On the High Council of Justice” concerning the definition of the status of the High Council of Justice, in particular its authorities to appoint (elect) or to dismiss the judges as well as to bring to disciplinary liability judges and prosecutors.

The Constitutional Court of Ukraine recognised as conforming with the Constitution of Ukraine (constitutional) several provisions of the Law of Ukraine “On the High Council of Justice” (Articles 1.2, 1.4, 18.1.8, 31.1, 32.1, 33.2.2, 37.2.2, 48, the second sentence of Article 25.1).

At the same time the Constitutional Court of Ukraine recognised as non-conforming with the Constitution of Ukraine (unconstitutional) such provisions of the Law of Ukraine “On the High Council of Justice” as Articles 30.1.1, 30.1.2, 37.3, 38.

**8. Ways and means for implementing the Constitutional Court’s decision: actions taken by the public authorities concerned afterwards. Examples.**

When normative legal acts are declared unconstitutional usually there are no any actions on the part of the body of state power that issued the mentioned act since the unconstitutional act loses its effect from the day the Constitutional Court adopts the decision on its unconstitutionality (Article 152.2 of the Constitution of Ukraine, Article 73.2 of the Law of Ukraine “On the Constitutional Court of Ukraine”). However, there appears a gap in the legislative (normative) regulation that should be eliminated by the relevant body. That means the norm-creating body adopts a new act, introduces amendments to the effective one (in the part that is constitutional), and repeals the act. Such procedure should conform with the Decision of the Constitutional Court of Ukraine to avoid repeat adoption of provisions that may be recognised unconstitutional. At the same time the material and procedural constitutionality should be adhered to during the adoption (introducing amendments, repealing) of acts.

The example of the way a Decision of the Constitutional Court of Ukraine may be executed is the Decision No. 11-rp/99 dated December 29, 1999 in the case upon the constitutional petition of 51 People’s Deputies of Ukraine concerning the conformity with the Constitution of Ukraine (constitutionality) of the provisions of Articles 24, 58, 59, 60, 93, 190-1 of the Criminal Code of Ukraine in the part that envisages the death penalty as a type of punishment (case on the death penalty). According to this Decision the provisions of Article 24 of the General Part and the provisions of sanctions by articles of the Special Part of the Criminal Code of Ukraine were recognised as non-conforming with the Constitution of Ukraine (unconstitutional) and the Verkhovna Rada of Ukraine was obliged to bring the Criminal Code of Ukraine in conformity with the mentioned Decision of the Constitutional Court of Ukraine. As a result the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Introducing Amendments to the Criminal Code of Ukraine, Code of Criminal Procedure of Ukraine, Correctional Labour Code of Ukraine on the basis of which Article 24 (the exclusive type of punishment - the death penalty) of the Criminal Code of Ukraine in the wording effective for that moment was excluded.

Another example is the execution of the Decision of the Constitutional Court of Ukraine No. 26-rp/2009 dated October 19, 2009 in the case on introducing amendments to some legislative acts of Ukraine concerning elections of the President of Ukraine. According to that Decision the provisions of Article 2.6 (in the part which established the necessity to be registered in consulates for citizens of Ukraine as a condition to exercise their right to elect the President of Ukraine), Articles 23.6, 24.9

(in the part which established the requirement for candidates to district or polling election commission to reside within relevant territorial district or city where the district is located), Articles 84.7, 99.4, 99.6 of the Law of Ukraine “On the Elections of the President of Ukraine”, the provisions of Articles 109.1.4, 117.6, the second sentence of Article 172.4, Article 176.12 of the Code of Administrative Proceedings of Ukraine. To execute this Decision the Verkhovna Rada of Ukraine did not adopt any law on introducing amendments to the abovementioned provisions of Law of Ukraine “On the Elections of the President of Ukraine” and Code of Administrative Proceedings of Ukraine. Instead the provisions of the abovementioned Law and Code remain effective except those provisions that were declared unconstitutional.

In its turn, the decisions concerning the official interpretation of the Constitution of Ukraine and laws of Ukraine are executed through observation of the given interpretation aimed at its unique application in the legislation and the courts’ practice. In particular, the Supreme Court of Ukraine in its Resolutions of the Plenum repeatedly drew the judges’ attention to observation of the provisions of the acts of the Constitutional Court of Ukraine (for example, the Resolution of the Plenum of the Supreme Court of Ukraine No. 2 dated June 12, 2009 “On application of the norms of the civil procedure legislation during consideration of cases in courts of first instance”).

### III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. **The Constitutional Court's decisions:**
  - a) are final (Article 150.3 of the Constitution of Ukraine, Article 63.4 of the Law of Ukraine "On the Constitutional Court of Ukraine");
  - b) shall not be appealed (Articles 65.1.9, 66.1.8. of the Law of Ukraine "On the Constitutional Court of Ukraine");
  - c) are mandatory *erga omnes*.
  
2. **As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional: (...)**
  - d) loses its legal force from the day the Constitutional Court of Ukraine adopts the decision on its unconstitutionality (Article 152.2 of the Constitution of Ukraine, Article 73.2 of the Law of Ukraine "On the Constitutional Court of Ukraine").
  
3. **Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?**

In accordance with Article 74 of the Law of Ukraine "On the Constitutional Court of Ukraine" the Constitutional Court of Ukraine may determine that its decision has prejudicial effect for courts of general jurisdiction during consideration of claims in connection with legal relations that emerged on the basis of an unconstitutional act. At the same time it should be mentioned that the Constitutional Court of Ukraine implements the abovementioned norm in its decisions not so often. Also the prejudicial nature of the acts of the Constitutional Court of Ukraine follows from Article 362 of the Code of Civil Procedure of Ukraine according to which the recognition of law or any other legal act or its provision as non-conforming with the Constitution of Ukraine (unconstitutional) by the Constitutional Court of Ukraine is a ground for revision of courts' rulings in view of newly discovered circumstances if the ruling has not yet been executed.

4. **Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?**

According to the Decision of the Constitutional Court No. 8-rp/1998 dated June 9, 1998 in the case upon the constitutional petition of the President of Ukraine concerning the official interpretation of paragraph two of Article 158 and Article 159 of the Constitution of Ukraine (case on introducing amendments to the Constitution of Ukraine) "*the scope of jurisdiction of the Constitutional Court is applied to deciding on the issues stipulated in Article 150 of the Constitution (conformity of laws and*

*other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea with the Constitution of Ukraine and official interpretation of the Constitution of Ukraine and laws of Ukraine) and some other articles of the Constitution of Ukraine, in particular Article 159 (conformity of a draft law on introducing amendments to the Constitution of Ukraine with the requirements of Article 157 and 158 of the Constitution). The former case implies the repressive constitutional review on the part of the Constitutional Court of Ukraine, i.e. examination of constitutionality of the effective legal acts, whereas the latter implies preliminary (preventive) constitutional review.*

*The Verkhovna Rada is under obligation to submit a draft law on introducing amendments to the Constitution for examination of its conformity with Articles 157 and 158 of the Constitution of Ukraine (Articles 147.1 and 159 of the Constitution of Ukraine). The provisions of Articles 157 and 158 of the Constitution contain the imperative which prohibits introducing amendments to the Constitution in contravention to the conditions prescribed by these Articles.*

*Exercising preventive constitutional review of draft laws on introducing amendments to the Constitution for their conformity with Articles 157 and 158 of the Constitution, the Constitutional Court of Ukraine does not restrict the authority of the Verkhovna Rada of Ukraine to introduce amendments to the Fundamental Law, but only ensures the constitutionality of their implementation by the Verkhovna Rada of Ukraine which is seen as one of the principal guarantees of the stability of the Constitution of Ukraine.*

*The distinction between the mentioned types of constitutional review lies in different forms of acts adopted by the Constitutional Court upon the results of constitutional proceedings. Whereas the repressive constitutional review provided for in Article 150 of the Constitution is performed in the form of a decision, the preventive review envisaged by Article 159 of the Constitution finishes by an opinion of the Constitutional Court. However, notwithstanding the discrepancies in form, decisions and opinions of the Constitutional Court are binding for execution. This is based on Article 124.3 of the Constitution whereby justice is administered by the Constitutional Court and courts of general jurisdiction and Article 124.5 of the Constitution whereby all court decisions, regardless of form, adopted in the name of Ukraine are binding throughout the territory of Ukraine. Thus, a Court decision rendered in the form of opinion of the Constitutional Court is binding.*

*In this way the issue is resolved in the Law of Ukraine “On the Constitutional Court of Ukraine” which envisages that the decisions and opinions of the Constitutional Court of Ukraine shall be equally binding (Article 69). The Constitutional Court’s opinion will have the meaning of a guarantee that the established order for introducing amendments to the Constitution is observed and signify the stability of the Constitution only if it is binding upon the Verkhovna Rada of Ukraine.*

*Non-compliance with this condition by the Verkhovna Rada of Ukraine would constitute a violation of the principle of exercising state power in Ukraine on the basis of its division into legislative, executive and judicial (Article 6 of the Constitution)” (paragraphs 4 - 9 of item 2 of the motivation part).*

As an example of the unconstitutional aspects which were found during *a priori* control there may be taken the Opinion of the Constitutional Court of Ukraine No. 3-v/2001 dated July 11, 2001 in the case upon the constitutional petition of the President of Ukraine on providing opinion concerning conformity with the Constitution of Ukraine of the Rome Statute of the International Criminal Court (the Rome Statute case) in which the Rome Statute of the International Criminal Court, signed on behalf of Ukraine on 20 January 2000, submitted to the Verkhovna Rada of Ukraine for granting consent on its binding nature, was recognised as non-conforming to the Constitution of Ukraine, to the extent concerning the provisions of paragraph ten of the Preamble and Article 1 of the Statute in which "the International Criminal Court ... complements the national criminal justice authorities". As a result the draft law on introducing amendments to the Constitution of Ukraine was prepared which aimed at creating the conditions necessary for ratification of the Rome Statute of the International Criminal Court by Ukraine by defining the status of the International Criminal Court in the Ukrainian legislation. The proposition was to stipulate in the Constitution of Ukraine the possibility for Ukraine to accept the jurisdiction of the International Criminal Court on the grounds envisaged by the Rome Statute of the International Criminal Court, because in accordance with Article 1 of the Statute the jurisdiction and functioning of the Court shall be governed by the provisions of this Statute, and thereby, the norms of national legislation of Ukraine would not be applied to it. The abovementioned amendment was to reflect the principle of subsidiarity and to stress the legal basis of the activities of the International Criminal Court. However, the above-mentioned amendments to the Constitution of Ukraine were not adopted. Hereby, the Rome Statute of the International Criminal Court which was adopted July 17, 1998 remains non-ratified by Ukraine up to now.

As regards *a posteriori* control it is worth mentioning that if legal acts or separate provisions thereof are recognised as non-conforming with the Constitution of Ukraine (unconstitutional) they are declared invalid and lose their legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality (Article 73.2 of the Law of Ukraine "On the Constitutional Court of Ukraine").

**5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

Taking into consideration that in accordance with the Law of Ukraine "On the Constitutional Court of Ukraine" legal acts are declared as non-conforming with the Constitution of Ukraine (unconstitutional) and lose their legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality, the legislative body has no relevant authorities to remove defects declared unconstitutional at its discretion. Unconstitutional acts or their separate provisions are repealed automatically from the day the Constitutional Court of Ukraine adopts relevant decision.

**6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

The abovementioned issue still remains unregulated at the legislative level in Ukraine, however at the practical level such efforts have been taken repeatedly. In our opinion, the best illustration for the situation mentioned in the question could be the adoption of the Rules of Procedure of the Verkhovna Rada of Ukraine.

Thus, at the time of adoption of the Constitution of Ukraine as of June 28, 1996 there were currently in force the Rules of Procedure of the Verkhovna Rada of Ukraine that had been adopted and enforced by the Resolution of the Verkhovna Rada of Ukraine dated July 27, 1994. For the first time the Constitutional Court stressed the necessity to adopt the Law “On the Rules of the Procedure of the Verkhovna Rada of Ukraine” already in its Decision No. 17-rp/98 dated December 3, 1998 (case on formation of the parliamentary factions at the Verkhovna Rada of Ukraine). In 1997 there were several unsuccessful attempts by the People’s Deputies to execute the constitutional requirements. In the Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine” dated December 8, 2004 among other novelties there were amendments to the norms concerning regulation of organisation and activities of the Verkhovna Rada of Ukraine. The abovementioned provision of Article 82 was repealed and three Articles mentioned “the Rules of Procedure of the Verkhovna Rada of Ukraine”. On March 16, 2006 the Verkhovna Rada of Ukraine adopted the Resolution “On the Rules of Procedure of the Verkhovna Rada of Ukraine”. According to the Decision of the Constitutional Court of Ukraine No. 4-rp/2008 dated April 8, 2008 the abovementioned Resolution was recognised unconstitutional. Instead the Verkhovna Rada by its Resolution dated April 8, 2008 adopted the Temporary Rules of Procedure and on September 17, 2008 by the Decision of the Constitutional Court No. 16-rp/2008 dated September 17, 2008 these Rules of Procedure were also declared unconstitutional. On September 19, 2008 the Verkhovna Rada of Ukraine adopted a new separate act – the Rules of Procedure of the Verkhovna Rada of Ukraine. In accordance with the Decision of the Constitutional Court of Ukraine No. 30-rp/2009 dated November 26, 2009 the Rules of Procedure of the Verkhovna Rada of Ukraine adopted on September 19, 2008 were also deemed to be unconstitutional. Currently the Law of Ukraine “On the Rules of Procedure of the Verkhovna Rada of Ukraine” dated February 10, 2010 is effective.

**7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

Where necessary, the Constitutional Court of Ukraine may determine in its decision or opinion the procedure and terms of its execution and oblige appropriate state bodies to ensure execution of the decision or adherence to the opinion (Article 70 of the Law of Ukraine “On the Constitutional Court of Ukraine”). The Constitutional

Court of Ukraine has the right to demand from bodies stated in Article 70 of the Law a written confirmation of execution of the decision or adherence to the opinion of the Constitutional Court of Ukraine (Article 70.2 of the Law of Ukraine “On the Constitutional Court of Ukraine”). In addition in the Decision of the Constitutional Court of Ukraine No. 15-rp/2000 dated December 14, 2000 (case on the procedure of execution of decisions of the Constitutional Court of Ukraine) the Court expressed its legal position according to which relevant bodies of state power are obliged to act on the grounds, in terms of their authorities and in the manner envisaged by the Constitution and laws of Ukraine regardless whether the Court determined the order of its execution or not in its decision or opinion.

Note. Statistic data is provided as of July 12, 2010.