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National Human Rights System in Ukraine

- **ABSTRACT:** *This article provides a comprehensive analysis of the national human rights system in Ukraine, focusing on three main aspects: constitutional protection of fundamental rights, fundamental rights adjudication, and human rights institutions. The study examines the complex relationship between human rights, fundamental rights, and constitutional rights within Ukraine's legal framework, highlighting their differentiation and interrelation. The 1996 Constitution of Ukraine established a robust mechanism for protecting human rights, with its Section II being dedicated to "Rights, Freedoms and Duties of Person and Citizen" and serving as the cornerstone of human rights protection at the national level. The constitutional mechanisms for protecting various groups are examined, including children, persons with disabilities, and vulnerable social groups, while probing into the guiding principles of human rights protection (e.g. human dignity, equality, and non-discrimination). Special attention is given to the Constitutional Court of Ukraine's role in protecting fundamental rights through judicial review and constitutional complaints. The interaction between national and international law in human rights protection is also investigated, particularly focusing on the implementation of international treaties and European Court of Human Rights jurisprudence. Another matter of interest is the effectiveness of Ukraine's national human rights institution, namely the Ombudsman's Office, with a thorough analysis of its compliance with the Paris Principles through six main pillars: independence, pluralism, cooperation, access, funding, and broad mandate. The chapter concludes by identifying current challenges in human rights protection in Ukraine, particularly in the context of the Russian military aggression, and suggests potential areas for improvement in the constitutional protection of rights.*

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- **KEYWORDS:** *Constitutional rights protection, Ukrainian Ombudsman institution, Constitutional Court of Ukraine, Fundamental rights adjudication, Human rights implementation, Paris Principles compliance*

1. The Protection of Fundamental Rights in the Constitutions of Ukraine

In the legal system of Ukraine, there is a certain differentiation and interrelation between the terms “human rights”, “fundamental rights”, and “constitutional rights”, although they are often used similarly. The Ukrainian legislation, in particular the Constitution of Ukraine (hereinafter, just the Constitution), the Civil Code, and other regulatory legal acts, demonstrate peculiarities in the use of these concepts. *Human rights* is the broadest category, including the entire spectrum of rights recognised by the international community and enshrined in international treaties, conventions, and declarations.¹ *Constitutional rights* is a narrower category, encompassing those rights directly enshrined in the Constitution and with the highest legal force in the national legal system. They constitute the core of the legal status of a person and directly determine the relationship between the state and the citizen. *Fundamental rights* are often considered as synonymous to constitutional rights, although in some scientific works they may have slightly different interpretations. For example, as rights that are fundamental to ensuring a person’s dignity and freedom.²

The Ukrainian judicial practice, especially that of the Constitutional Court, demonstrates a comprehensive approach to the interpretation of these concepts. The courts consider not only the letter of the law but also international human rights standards and the practice of the European Court of Human Rights. This means that the meanings of terms “*human rights*”, “*fundamental rights*”, and “*constitutional rights*” are considered in a dynamic context and while taking into account the evolution of legal norms and the needs of society. Such an approach ensures law enforcement flexibility and the adaptation of the legal system to modern challenges and citizen needs.³

The Constitution of Ukraine, adopted on June 28, 1996,⁴ is a key document that enshrines human rights and freedoms of the highest social value. Section II of the Constitution, entitled “Rights, Freedoms and Duties of Person and Citizen”, contains an exhaustive list of fundamental rights, covering a wide range of civil, political, social, economic, and cultural rights. This Section is a unique structural

1 Белов [Byelov], 2003, pp. 33–34.

2 Антонович [Antonovych], 2000, pp. 51–52.

3 Фулей [Fulei], 2015, p. 20.

4 Konstytutsiia Ukrainy.

part of the constitutional text – which holistically and systematically enshrines human rights. It does not simply contain a list of rights, but provides a complex mechanism for legal regulation of a person's status at the state level. The placement of human rights in a separate section emphasises their fundamental importance and priority in the Ukrainian legal system, demonstrating a fundamental difference between the domestic constitutional model and the previous⁵.⁶

The structure of Section II of the Constitution is extremely detailed and comprehensive, covering from fundamental personal rights (e.g., the right to life, respect for dignity, and freedom and personal integrity) to complex socio-economic and cultural rights (e.g., the right to work, education, social protection, and healthcare). Each article both proclaims a certain right and establishes basic guarantees for its implementation, making the constitutional provisions directly applicable norms instead of declarative statements. Importantly, Section II's fundamental novelty lies in its conceptual structure, which reflects modern international legal standards of human rights, in that the articles proclaim the rights of any person, regardless of citizenship. Key are the provisions on the impossibility of narrowing the content and scope of existing rights, the direct effect of constitutional norms, and the responsibility of the state to man. These characteristics make this separate section on human rights in the Constitution a powerful legal instrument for the protection of individual freedom and dignity of the person in this democratic state.⁷

The Constitution establishes a unique mechanism for the interaction of national law with international law, especially for human rights. Article 9 of the Constitution stipulates that international treaties in force, the consent to be bound by which has been granted by the Verkhovna Rada of Ukraine, are part of national legislation. This means that international human rights treaties ratified by Ukraine have the same legal force as domestic regulatory legal acts and are mandatory for execution by all state authorities, courts, and officials.⁸ An important feature of Ukrainian constitutionalism is the priority of international treaties for human rights over national legislation in the event of conflicts. If an international treaty establishes broader rights and guarantees than the national legislation, then the norms of the international treaty apply. This provision directly follows from the constitutional principle of ensuring human rights and freedoms as the highest social values, and the approach is fully correlated with the practice of the European Court of Human Rights, contributing to the implementation of international human rights standards in the Ukrainian legal system.

The constitutional mechanism of interaction with international law provides both for the formal recognition of international treaties and their active use

5 Белов [Byelov], 2023, p. 12.

6 Белов [Byelov], 2023, p. 14.

7 Олійник [Oliinik], 2018, pp. 33–35.

8 Денисов [Denysov], 2002, pp. 41–42.

in law enforcement practice. Accordingly, the Constitutional Court of Ukraine and courts of general jurisdiction increasingly refer to international treaties as a source of law when interpreting constitutional provisions and resolving specific cases. Ukraine has also undertaken to comply with and actively implement international human rights standards, as reflected in the processes of the country's legal reform, the approximation of national legislation to European standards, and the consistent judicial practice in the protection of human rights.⁹

The mechanism for the protection of human rights in Ukraine configures a complex, multi-level system of interconnected state institutions and legal procedures aimed at ensuring, protecting, and restoring citizens' rights and freedoms. This mechanism includes both domestic (e.g. administrative, judicial, and constitutional) and international methods of protection (e.g. appeals to international judicial institutions, such as the European Court of Human Rights), and provides for a comprehensive approach to human rights implantation through regulatory regulation, law enforcement, judicial protection, and state control.¹⁰ According to the Constitution, the following are responsible for the protection of rights and freedoms: 1) the President of Ukraine; 2) the Verkhovna Rada of Ukraine; 3) the Cabinet of Ministers of Ukraine; 4) Bodies of General Jurisdiction (local courts, courts of appeal, Supreme Court); 5) Bodies of Special Jurisdiction (Constitutional Court of Ukraine, administrative courts, commercial courts); 6) the Ombudsman of Ukraine; 7) Local self-government bodies.¹¹

Importantly, the Constitution provides for both a vertical and horizontal concept of the functioning of human rights. This is expressly enshrined in Articles 3 and 22 establishing that human rights and freedoms should be realised in state-individual relations and in relations between private individuals, hence recognising the universality and indivisibility of human rights.

The Constitution provides for the protection of the rights of the following groups and individuals (albeit some are not directly mentioned in the text of the Constitution, their protection is also provided for indirectly). First, children¹², including orphans, those deprived of parental care, those with disabilities, and gifted children. The Constitution guarantees the state protection of childhood, determining that any violence against a child or its exploitation must be prosecuted by law. The state fully ensures the maintenance and upbringing of orphans at the expense of budget funds. Second, persons with disabilities¹³, including those with physical and with intellectual disabilities. The Constitution prohibits discrimination based on disability and guarantees social protection, the establishment of state pensions, other types of social payments, and assistance for persons

9 Мартиненко [Martinenko], 2000, pp. 110–112.

10 Suchasni mekhanizmy zakhystu prav liudyny, 2020, pp. 45–46.

11 Павлик [Pavlik], 2014, pp. 35–37.

12 Arts. 51–52 of the Constitution.

13 Arts. 24 and 46 of the Constitution.

with disabilities. Third, vulnerable social groups¹⁴, encompassing large families, single mothers, war veterans, combatants, and older adults. The Constitution also establishes that all have the right to social protection, including the right to security in the event of full, partial, or temporary loss of working capacity. Fourth, special categories of citizens¹⁵, like those internally displaced, refugees and stateless persons, and victims of the Chernobyl disaster. The Constitution guarantees for foreigners and stateless persons the rights, freedoms, and obligations on an equal basis with Ukrainian citizens, with exceptions established by law. Furthermore, it guarantees everyone's right to an adequate standard of living for themselves and their families.

The Constitution therefore establishes that human rights and freedoms are universal and cannot be limited or abolished, as well as delivers additional guarantees and mechanisms of social protection are provided for certain groups of the population, in consideration of their specific needs and life circumstances.¹⁶ This means that some of the features of constitutional protection in Ukraine are the actual declaration of rights and these special mechanisms for right implementation in vulnerable groups. Accordingly, the Constitution emphasises the inadmissibility of discrimination on any grounds and ensures equality of rights and opportunities for all persons, regardless of social status, physical abilities, age, or other characteristics.

According to the Constitution, the guiding principles of the status of a person in the state are as showcased in the numbered list below.

1. Person as the highest social value (Article 3): human rights and freedoms and their guarantees determine the content and direction of the state's activities; the state is responsible for all persons in relation to its activities; the establishment and provision of human rights is the main duty of the state.

Thus, the Decision of the Constitutional Court of Ukraine particularly states:

'The Constitutional Court of Ukraine believes that the state's guarantee of the right to early retirement for elderly citizens was aimed at protecting these citizens from such social risks as unemployment due to circumstances beyond their control and ensuring favourable conditions for their full and dignified life in old age.'¹⁷

2. The principle of equality and non-discrimination (Article 24): a constitutional provision on the equality of all people regarding their rights; a prohibition of

14 Arts. 24, 46, and 49 of the Constitution.

15 Arts. 26 and 47 of the Constitution.

16 Букач [Bukach], 2001, pp. 44–45.

17 Rishennia Konstytutsiinoho Sudu Ukrainy, 22 May 2018, No. 5-p/2018.

restrictions on any grounds, be it race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, among others.

Thus, the Decision of the Constitutional Court of Ukraine particularly states:

'[...] equality and non-discrimination of a person are not only constitutional principles of the national legal system of Ukraine, but also fundamental values of the world community, as emphasized in international legal acts on the protection of human and civil rights and freedoms, in particular in the International Covenant on Civil and Political Rights of 1966 (Articles 14, 26), the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 14), Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 1), ratified by Ukraine, and in the Universal Declaration of Human Rights of 1948 (Articles 1, 2, 7). The equality of all people in their rights and freedoms guaranteed by the Constitution of Ukraine means the need to provide them with equal legal opportunities of both a material and procedural nature for the implementation of rights and freedoms that are equal in content and scope. In a state governed by the rule of law, an appeal to the court is a universal mechanism for protecting the rights, freedoms and legitimate interests of individuals and legal entities.'¹⁸

3. *The principle of inalienability and inviolability of human rights (Articles 21–22):* rights and freedoms are inalienable and inviolable; the narrowing of the content and scope of existing rights and freedoms is not allowed; constitutional rights are not exhaustive.

Thus, the Decision of the Constitutional Court of Ukraine particularly states:

'[...] understanding of law does not give grounds for its identification with the law, which can sometimes be unjust, including limiting the freedom and equality of a person. Justice is one of the basic principles of law, is decisive in defining it as a regulator of social relations, one of the universal dimensions of law. Usually, justice is considered as a property of law, expressed, in particular, in an equal legal scale of behavior and in the proportionality of legal responsibility to the offense committed. In the sphere of the implementation of law, justice is manifested, in particular, in the equality of all before the

18 Rishennia Konstytutsiinoho Sudu Ukrainy, 12 April 2012, No. 9-pn/2012.

law, the correspondence of crime and punishment, the goals of the legislator and the means chosen to achieve them.¹⁹

4. *The principle of guarantee of rights and freedoms (Article 55):* rights and freedoms are protected by the court; everyone is guaranteed the right to appeal in court decisions, actions, or in the case of the inaction of state authorities.

Thus, the Opinion of the Constitutional Court of Ukraine particularly states,

‘[...] that a person must be guaranteed the right to have his case reviewed by a court of appeal; after the appellate review of the case, the parties to the trial may be granted the right to appeal court decisions of the first and appellate instances to the court of cassation in cases specified by law, which will contribute to ensuring the implementation of the principle of the rule of law.’²⁰

5. *The principle of the direct effect of constitutional rights (Article 8):* the Constitution has the highest legal force; the norms of the Constitution are norms of direct effect.

Thus, the Decision of the Constitutional Court of Ukraine particularly states:

‘The Constitution of Ukraine has the highest legal force; laws and other regulatory legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it; the norms of the Constitution of Ukraine are norms of direct effect; an appeal to the court to protect the constitutional rights and freedoms of a person and a citizen is guaranteed directly on the basis of the Constitution of Ukraine; constitutional rights and freedoms are guaranteed and cannot be canceled (parts two, three of Article 8, part two of Article 22 of the Constitution of Ukraine).’²¹

The axiological basis of rights in the Constitution is universal in nature and based on the human values of dignity, freedom, equality, and justice. The Constitutional Court of Ukraine consistently emphasises that human rights have an internal subordination, such that the right to life, human dignity, and personal integrity occupy the highest place in the hierarchy of constitutional values. This axiological paradigm of human rights in the Constitution hence reflects a deep civilizational

19 Rishennia Konstytutsiinoho Sudu Ukrainy, 2 November 2004, No.15-pr/2004.

20 Rishennia Konstytutsiinoho Sudu Ukrainy, 20 January 2016, No. 1-B/2016.

21 Rishennia Konstytutsiinoho Sudu Ukrainy, 12 April 2012, No. 9-pr/2012.

choice in favour of democratic values, European human rights standards, and humanistic principles. It is formed under the influence of international legal documents, in particular the Universal Declaration of Human Rights, the European Convention on Human Rights, and philosophical concepts of natural law, considering human rights as an integral attribute of the individual derived from his/her nature and dignity. The constitutional axiology of human rights in Ukraine also has a distinctly transformative character, reflecting the complex path of the formation of a democratic legal state. That is, this constitutional axiology acts as a legal construct and a symbol of the cultural and political rebirth of society; as a mechanism for overcoming the totalitarian legacy of the past and establishing the principles of individual freedom, respect for the individual, and the individual's inalienable rights.²²

The rights and freedoms of the person and the citizen are systematised in Section II of the Constitution, wherein we can distinguish those articles pertaining to personal rights²³, which are the right to life, respect for dignity, freedom and personal inviolability, inviolability of private life, secrecy of correspondence, telephone conversations, inviolability of home, freedom of movement, and right to citizenship. We can also distinguish those pertaining to political rights²⁴, which are the right to freedom of thought and speech, information, peaceful assembly, association, participation in the management of state affairs, to elect and be elected, and right to appeal. There are also socio-economic rights²⁵, including the right to work, strike, social protection, housing, healthcare, and education. Moreover, there are cultural rights²⁶, including right to freedom of creativity, education in the native language, and to cultural heritage, and environmental rights²⁷, encompassing the right to a safe environment and compensation for environmental damage.²⁸

Among the rights and freedoms contained in the Constitution that are particularly important in the political, social, and economic system of the country, the following rights can be distinguished.

*The right to work*²⁹: this right is key to the socioeconomic stability of the state, ensuring the economic independence of citizens and providing the grounding for social protection and individual and collective economic capacity. This right is especially critical in transitional societies for overcoming poverty and ensuring social mobility.

22 Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini, 2007, pp. 42–43.

23 Arts. 27–29 of the Constitution.

24 Arts. 34–36 of the Constitution.

25 Arts. 43–49 of the Constitution.

26 Arts. 53–54 of the Constitution.

27 Art. 50 of the Constitution.

28 Белов [Byelov], 2003, pp. 32–35.

29 Art. 43 of the Constitution

*The right to freedom of thought and speech*³⁰: this right is crucial for the democratic development of Ukraine, being the basis for political pluralism, authoritarian tendency prevention, and providing the opportunity for authorities to be criticised and public opinion to be formed. The right creates space for social dialogue and consolidation.

*The right to social protection*³¹: this right is central to ensuring social justice and solidarity, especially in conditions of economic instability, war, and significant social transformations in Ukraine. The law prevents the marginalisation of vulnerable groups of the population and provides minimum social guarantees.

*The right to education*³²: this right determines the potential for the country's long-term development, providing a social lift, securing the intellectual development of society, and the competitiveness of the state at the global level. This law is critical for the formation of human capital and overcoming social inequality.³³

The Constitution provides a systematic approach for providing any restrictions to constitutional rights and freedoms, reflecting the balance between individual rights and public interests. Article 64 of the Basic Law of Ukraine establishes the fundamental principles of such restrictions, determining that '*constitutional rights may be restricted only in cases expressly provided for by the Constitution*'. Of particular importance is the provision that during a state of emergency or martial law, temporary restrictions on certain rights may be introduced, but it is absolutely forbidden to restrict a number of rights, including the right to life, respect for dignity, and freedom of religion.³⁴

The Constitution contains both universal and differentiated mechanisms for acting on general and special provisions on the restriction of rights. General restrictions are defined in Article 64 and serve as basic principles applicable to all categories of rights. Special provisions relate to specific types of rights. For example, first, there are those pertaining to personal rights³⁵, for which restrictions are permitted for the purposes of protecting the rights of other persons, ensuring national security, and protecting public order. Second, regarding political rights³⁶, restrictions are possible in the interests of national security, prevention of unrest, and protection of the rights and freedoms of other persons. Third, regarding socioeconomic rights³⁷, where restrictions are allowed for purposes of economic feasibility, state guarantees of social protection, and ensuring economic stability. These special constitutional restrictions are more objective in nature and depend on the specifics of a particular group of rights. For instance, political

30 Art. 34 of the Constitution.

31 Art. 46 of the Constitution.

32 Art. 53 of the Constitution.

33 Белов, Сідак [Byelov and Sidak], 2008, pp. 208–210.

34 Dahova, 2018, pp. 18–19.

35 Arts. 27–29 of the Constitution.

36 Arts. 34–36 of the Constitution.

37 Arts. 43–49 of the Constitution.

rights may be restricted during martial law, the right to peaceful assembly for reasons of public security, and the right to work in cases provided for by labour legislation.³⁸

We draw attention herein to some of the Decisions of the Constitutional Court of Ukraine concerning the restriction of human rights.

The Decision of the Constitutional Court of Ukraine dated 2 November 2004 No. 15-пп/2004 establishes the fundamental principle of the impossibility of narrowing the content and scope of existing constitutional rights. The Court clearly determined that when adopting new laws or making amendments to existing legislative acts, the scope and content of existing rights and freedoms shall not be reduced. This decision is fundamental in the context of ensuring the inviolability of constitutional guarantees and protecting human rights from unjustified restriction.³⁹

The decision of the Constitutional Court of Ukraine dated 22 May 2018 No. 5-p/2018 concerns the social rights of internally displaced persons and reveals the mechanisms for protecting their rights in special circumstances. The Court confirmed the need to ensure the full scope of social guarantees for persons displaced as a result of temporary occupation or armed conflict, establishing that the status of an internally displaced person cannot be a basis for restricting constitutional rights and freedoms.⁴⁰

The decision of the Constitutional Court of Ukraine dated 8 September 2016 No. 6-пп/2016 details the rules for restricting the right to peaceful assembly and establishes clear criteria for the admissibility of such restrictions. The Court determined that any restrictions on the right to peaceful assembly must be proportionate, pursue a legitimate aim, and be necessary in a democratic society. The decision introduced a comprehensive proportionality test when assessing the possibility of restricting the right to peaceful assembly.⁴¹

The decision of the Constitutional Court of Ukraine dated 25 December 2003 No. 22-пп/2003 reveals the mechanisms of judicial protection of rights and the interpretation of the right to appeal. The Court confirmed that the right to appeal court decisions is a fundamental constitutional guarantee of human rights protection. The Court established that legislative provisions cannot narrow nor limit the right of a person to full judicial protection.⁴²

The decision of the Constitutional Court of Ukraine dated 12 April 2012 No. 9-пп/2012 focuses on issues of equality of the rights of men and women and establishes the inadmissibility of any forms of discrimination. The Court clearly defined that the principle of equality goes beyond formal identity to include fair

38 Сущенко [Sushchenko], 2012, pp. 30–31.

39 Rishennia Konstytutsiinoho Sudu Ukrainy, 2 November 2004, No. 15-пп/2004.

40 Rishennia Konstytutsiinoho Sudu Ukrainy, 28 December 2014, No. 76-VIII.

41 Rishennia Konstytutsiinoho Sudu Ukrainy, 8 September 2016, No. 6-пп/2016.

42 Rishennia Konstytutsiinoho Sudu Ukrainy, 25 December 2003, No. 22-пп/2003.

treatment by considering the individual characteristics and needs of different groups of the population.⁴³

Worthy of note is that the “proportionality test” in the constitutional law of Ukraine is a complex multicomponent mechanism for assessing the legality of restrictions on rights and freedoms. It is formed by the practice of the Constitutional Court on the basis of European human rights standards, with the main elements of this test including four consecutive criteria, as outlined hereinafter: 1) legitimacy of the purpose of the restriction, which assumes the presence of a constitutionally significant basis for the restriction; 2) suitability of the chosen measure, which assesses the ability of the chosen measure to achieve the set goal 3) necessity of the intervention, which determines whether there are no milder, alternative ways to achieve the goal; 4) proportionality between the purpose of the restriction and its consequences, which requires that the negative consequences of the restriction do not outweigh the positive results.

Moreover, the practical application of the “proportionality test” in Ukrainian constitutional jurisdiction involves a detailed analysis of each element of the restriction of rights from the point of view of compliance with the principles of the rule of law, justice, and democracy. The Constitutional Court of Ukraine consistently emphasises that any restriction of constitutional rights must be minimally burdensome for the individual, not violate the essence of the right, and comply with the general principles of the constitutional order. The proportionality test is actually a legal instrument that ensures a balance between the public interests of the state and the individual rights of the individual, preventing unjustified interference in the private sphere and guaranteeing compliance with fundamental human rights.⁴⁴

The way freedoms and rights are regulated in the Constitution entails significant advantages and significant challenges in modern days. The 1996 Constitution was certainly a progressive document for its time, enshrining European human rights standards and democratic values. However, dynamic changes in society, especially after the revolutions of 2004 and 2014, as well as the beginning of the full-scale invasion of the Russian Federation into the territory of independent Ukraine in February 2022, put forward new requirements for the constitutional regulation of rights and freedoms.

Modern challenges require a significant adaptation of the constitutional provisions to new social realities. Particular attention is necessary to the issues of digital rights, protection of personal data, rights of internally displaced persons, ensuring rights in conditions of hybrid war, and information conflicts, which remain insufficiently regulated. The Constitution needs clearer mechanisms for

43 Rishennia Konstytutsiinoho Sudu Ukrainy, 12 April 2012, No. 8-пп/2012.

44 Євтошук [Yevtozhuk], 2015, p. 41.

protecting rights in the digital space, regulating the status of virtual communication, and ensuring the information security of the individual.⁴⁵

At the same time, despite certain gaps, the current Constitution demonstrates significant potential for adaptability and flexibility. The mechanisms of interpretation by the Constitutional Court allow for a dynamic interpretation of constitutional norms in accordance with modern challenges. Still, it remains especially important that the constitutional principles of the rule of law, the priority of human rights, and their inalienability and inviolability remain fundamental and can absorb new challenges. Therefore, further improvement of the constitutional regulation of rights and freedoms requires not so much revolutionary changes as evolutionary renewal and adaptation of existing constitutional mechanisms.⁴⁶

Section VIII of the Constitution on “Justice” is a fundamental part of the Fundamental Law of Ukraine, establishing the basic principles for the organisation and functioning of the judicial system in the country. This section defines the judiciary as an independent and autonomous branch of state power that administers justice on the basis of the rule of law. Its constitutional provisions enshrine the principles of independence of judges, their immunity, prohibition of influence on judges, and guarantee the right of everyone to a fair and impartial trial.⁴⁷ The Constitution regulates in detail the right to access to justice and effective legal protection in several key articles, which are explored below.

Article 55 on the basic constitutional provision on the right to judicial protection: guarantees everyone the right to appeal in court decisions; to appeal about the actions or inactions of state authorities; establishes that everyone has the right to apply to court if their rights are violated; prohibits the denial of judicial protection.

Article 124 establishes the basic principles of the administration of justice: justice is administered exclusively by courts; the delegation of court functions is prohibited; the independence and impartiality of the judiciary are guaranteed.

Article 129 defines the basic principles of judicial proceedings: equality of all participants in the trial before the law and the court; adversarial nature of the parties and freedom in providing the court with their evidence; publicity of the trial; ensuring appeal and cassation appeal of court decisions.

Additional guarantees: the right to free legal aid⁴⁸, presumption of innocence⁴⁹, and prohibition of the retroactive effect of the law in time regarding the liability of a person.⁵⁰

45 Забужко [Zabuzhko], 2013, pp. 51–55.

46 Мироненко [Myronenko], 2011, p. 45

47 Konstyutsiine pravo Ukrainy, 2020, pp. 80–82.

48 Art. 59 of the Constitution.

49 Art. 62 of the Constitution.

50 Bygun, 2020, pp. 71–72.

The Constitutional Court of Ukraine consistently emphasises in its decisions that the right to judicial protection is fundamental and cannot be limited, providing a real opportunity to restore violated rights through an independent and impartial judicial system. The paragraphs that follow deliver examples of several key decisions of the Court of Ukraine on the right to judicial protection.

The decision of the Constitutional Court dated of 25 November 2009 No. 33-рп/2009 confirmed the absolute nature of the right to judicial protection, establishing that no circumstances can be a basis for restricting a person's right to apply to court. The decision emphasised that the right to judicial protection is universal and guaranteed regardless of the category of the case, the status of the person, or other circumstances. The Court determined that the state is obliged to create mechanisms for real and effective judicial protection of citizens' rights.⁵¹

The decision of the Constitutional Court dated of 14 December 2011 No. 19-рп/2011 concerns the interpretation of the right to appeal and cassation appeal of court decisions. The Constitutional Court emphasised that the right to appeal a court decision is a component of the right to judicial protection, establishing that legislative restrictions on appeals must be proportionate and justified, and must not violate the essence of the right to judicial protection.⁵²

The decision of the Constitutional Court dated of 20 January 2016 No. 1-рп/2016 defines mechanisms for ensuring the right to a fair trial. The Court emphasised the inadmissibility of narrowing the content of the right to judicial protection by establishing legislative barriers that complicate access to justice. The decision outlined that the court must ensure full and effective protection of violated rights.⁵³

The decision of the Constitutional Court dated of 11 March 2010 No. 7-рп/2010 concerns the right to free legal aid as a component of the right to judicial protection. The Constitutional Court determined that the state is obliged to ensure a real opportunity to receive legal aid to persons who do not have sufficient funds to pay for legal aid.⁵⁴

The decision of the Constitutional Court dated of 12 April 2012 No. 8-рп/2012 reveals the principles of judicial independence and inadmissibility of interference in judicial activities. The Court confirmed that the right to judicial protection provides the formal possibility of applying to court and a guarantee of receiving independent and impartial justice.⁵⁵

The Constitution also provides international legal mechanisms for the protection of human rights. Article 55 particularly enshrines the right of a person, after exhausting all national legal remedies, to apply to international judicial

51 Rishennia Konstytutsiinoho Sudu Ukrainy, 14 December 2011, No. 19-рп/2011.

52 Rishennia Konstytutsiinoho Sudu Ukrainy, 14 December 2011, No. 19-рп/2011.

53 Rishennia Konstytutsiinoho Sudu Ukrainy, 20 January 2016, No. 1-рп/2016.

54 Rishennia Konstytutsiinoho Sudu Ukrainy, 11 March 2010, No. 7-рп/2010.

55 Rishennia Konstytutsiinoho Sudu Ukrainy, 12 April 2012, No. 8-рп/2012.

institutions, in particular to the European Court of Human Rights. This provision implements international legal standards for the protection of human rights and correlates with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The mechanism provides that a person may appeal the decisions of Ukrainian courts at the international level only after he/she has exhausted all domestic means of protecting his/her rights, that is, after having gone through all instances of the national judicial system (i.e. the local court, the courts of appeal, and the courts of cassation). This approach ensures the subsidiarity of international justice and provides additional guarantees for the protection of human rights outside the national legal system.⁵⁶

The Constitution establishes a system of duties in Section II, particularly in the articles devoted to such duties.⁵⁷ These articles establish the fundamental constitutional duties of citizens of Ukraine, which are of a public–legal nature and are aimed at ensuring national security, social solidarity and preserving statehood. Duties are universal in nature and cover a wide range of relations: from defence of the Homeland and respecting state symbols to paying taxes, observing the Constitution and laws, and preserving nature and the cultural heritage. Constitutional duties are formal prescriptions and also reflect deep social values and mechanisms of interaction between the individual, society, and the state.⁵⁸ Among the various duties, the following can be distinguished.

Duties for citizens of Ukraine: defence of the Homeland' its independence, and territorial integrity⁵⁹; respect for state symbols⁶⁰; payment of taxes and fees⁶¹; strict observance of the Constitution and laws of Ukraine⁶²; preservation of nature and cultural heritage.⁶³

Limited duties for foreigners and stateless persons: observance of the Constitution and laws of Ukraine⁶⁴; respect for state symbols⁶⁵; preservation of nature and cultural heritage.⁶⁶

Collective duties: for parents, maintenance and upbringing of children⁶⁷; for adult children, maintenance of incapacitated parents.⁶⁸

56 Наливайко [Nalyvaiko], 2014, pp. 101–103.

57 Arts. 51, 55 and 65–68 of the Constitution.

58 See *Oboviazky liudny i hromadianyna* [Online]. Available at: <https://ccu.gov.ua/storinka-knygy/4416-pravo-znaty-svoyi-prava-i-obov'yazky> (Accessed: 20 April 2026).

59 Art. 65 of the Constitution.

60 Art. 65 of the Constitution.

61 Art. 67 of the Constitution.

62 Art. 68 of the Constitution.

63 Art. 66 of the Constitution.

64 Art. 68 of the Constitution.

65 Art. 65 of the Constitution.

66 Art. 66 of the Constitution.

67 Arts. 51 and 55 of the Constitution.

68 Art. 55 of the Constitution; Молдован [Moldavan], 2012, pp. 54–55.

2. Fundamental Rights Adjudication in Ukraine

Ukraine has created a comprehensive system of state bodies that ensure the protection of the fundamental rights and freedoms of person and citizen. This system includes specialised bodies of constitutional control and parliamentary supervision, along with an extensive system of courts of general jurisdiction, law enforcement agencies, and other institutions, each performing its own functions in the field of protection of rights in accordance with its competence. Let us consider in more detail the main bodies of this system and their powers.

The Constitutional Court of Ukraine exercises control over the compliance of laws and other legal acts with the Constitution; considers constitutional complaints of citizens regarding the violation of their constitutional rights; provides an official interpretation of the Constitution.

The Ombudsman of Ukraine exercises parliamentary control over the observance of human rights; receives and considers citizens' appeals regarding the violation of their rights; monitors the state of observance of human rights; has the right to submit constitutional submissions to the Constitutional Court of Ukraine.

The Supreme Court is the highest court in the judicial system of Ukraine; ensures the unity of judicial practice; considers cases as a court of cassation; has the right to appeal to the Constitutional Court of Ukraine on the constitutionality of laws.

The system of administrative courts considers disputes between citizens and subjects of government authority; protects the rights of citizens from unlawful actions or inactions of state authorities; is headed by the Supreme Court.

General courts (courts of general jurisdiction) consider civil, criminal, administrative cases; ensure the protection of violated rights in specific legal relations; act as courts of first and appellate instance.

The Prosecutor's Office of Ukraine supports public prosecution in court; represents the interests of the state in court in exceptional cases; supervises compliance with laws in the execution of court decisions in criminal cases.

The National Police ensure the protection of the rights and freedoms of citizens; prevents and investigates offenses; maintains public safety and order.

The State Bureau of Investigation investigates crimes committed by senior officials; prevents violations of citizens' rights by law enforcement officers.

The distribution of functions between these bodies is carried out according to the following principles: specialisation, as each body has its own sphere of responsibility; independence, as each body acts independently within the limits of its powers; interaction, as bodies can cooperate for the effective protection of

rights; subsidiarity, as higher bodies complement the activities of lower ones; jurisdiction, as the decisions of lower bodies can be appealed to higher ones.⁶⁹

The Constitutional Court of Ukraine occupies a special place in the system of state authorities, being the only body of constitutional jurisdiction that ensures the supremacy of the Constitution, decides on the compliance of laws and other legal acts with the Constitution, and provides an official interpretation of the Constitution. The status of the Constitutional Court of Ukraine is determined by a set of regulatory legal acts, the main of which are the Constitution and the Law of Ukraine “On the Constitutional Court of Ukraine”.⁷⁰ The main powers of the Court are as outlined herein: 1) Resolving issues of constitutionality⁷¹: 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; international treaties submitted to the Verkhovna Rada of Ukraine for consent on their binding nature; 2) official interpretation of the Constitution⁷²; Consideration of constitutional complaints regarding the constitutionality of laws⁷³; 3) providing conclusions on⁷⁴ compliance of draft laws on amendments to the Constitution with the requirements of Articles 157 and 158 of the Constitution; 4) compliance of the constitutional procedure for investigating and considering the case of the removal of the President of Ukraine from office by impeachment; 5) compliance of issues proposed for submission to an all-Ukrainian referendum with the Constitution; 6) resolving issues on violations by the Verkhovna Rada of the Autonomous Republic of Crimea of the Constitution or laws of Ukraine⁷⁵.

The procedural aspects of the activities of the Constitutional Court of Ukraine are additionally regulated by the Regulations of the Constitutional Court of Ukraine (approved by the Resolution of the Constitutional Court of Ukraine dated 22 February 2018 No. 1-ps/2018)⁷⁶ and internal acts regulating the organisation of the work of the Constitutional Court of Ukraine (regulations on the Secretariat, on permanent commissions, etc.). The Constitutional Court of Ukraine also has the right to: request documents, materials, and other information related to the case from state authorities, local self-government bodies, and their officials⁷⁷; appoint an expert examination and get specialists involved in constitutional

69 Бисара [Bysaha] et al., 2003, p. 12.

70 Pro Konstytutsiyni Sud Ukrainy: Zakon Ukrainy, 13 July 2017, No. 2136-VIII.

71 Art. 7 of the Law on the Constitutional Court of Ukraine.

72 Art. 7 of the Law on the Constitutional Court of Ukraine.

73 Arts. 55–56 of the Law on the Constitutional Court of Ukraine.

74 Art. 7 of the Law on the Constitutional Court of Ukraine.

75 Art. 7 of the Law on the Constitutional Court of Ukraine.

76 Postanova Konstytutsiinoho Sudu Ukrainy pro Rehlement Konstytutsiinoho Sudu Ukrainy, 22 February 2018, No. 1-ps/2018.

77 Art. 54 of the Law on the Constitutional Court of Ukraine.

proceedings⁷⁸; summon officials, experts, specialists, witnesses to meetings, and plenary sessions⁷⁹. The decisions and conclusions of the Constitutional Court of Ukraine are binding, final and cannot be appealed⁸⁰.

The Constitutional Court of Ukraine implements the protection of fundamental rights through two main forms of constitutional control, namely general control over the compliance of regulatory acts with the Constitution (control over norms) and consideration of constitutional complaints from individuals and legal entities. These mechanisms provide both a collective protection of constitutional rights through the verification of regulatory acts, and an individual protection of the rights of specific individuals through the institution of a constitutional complaint. Let us consider in more detail each of these mechanisms and their features.

1. Judicial control (control over norms)

Preliminary control (ex ante) includes the verification of the constitutionality of draft laws on amendments to the Constitution⁸¹; verification of the compliance of international treaties with the Constitution before their ratification⁸²; verification of issues submitted to an all-Ukrainian referendum⁸³.

Subsequent control (ex post) involves the verification of the constitutionality of current laws and other acts⁸⁴; the verification of the constitutionality of laws upon constitutional complaints⁸⁵.

Abstract control is carried out regardless of the specific case and is possible to be initiated by the President of Ukraine, at least 45 people's deputies, the Supreme Court, and the Ombudsman of Ukraine⁸⁶.

Specific control is related to a specific case; is initiated through a constitutional complaint or upon the application of a court of general jurisdiction; concerns the law applied in a specific case.⁸⁷

In the context of a specific constitutional review, the factual circumstances of the case in which the disputed legislative provision was applied, as a rule, do not play a decisive role in assessing its constitutionality. Rather, the Constitutional Court of Ukraine carries out an abstract normative review, examining the compliance of the disputed provision with the Constitution regardless of the specific circumstances of the case. The court focuses on analysing the content of the norm,

78 Art. 54 of the Law on the Constitutional Court of Ukraine.

79 Art. 54 of the Law on the Constitutional Court of Ukraine.

80 Art. 151-2 of the Law on the Constitutional Court of Ukraine.

81 Arts. 158–159 of the Constitution.

82 Art. 7 of the Law on the Constitutional Court of Ukraine.

83 Art. 151 of the Constitution.

84 Art. 150 of the Constitution.

85 Art. 151-1 of the Constitution.

86 Art. 52 of the Law on the Constitutional Court of Ukraine.

87 Моїч [Monich], 2022, pp. 34–36.

its correlation with constitutional principles and provisions, and not on how this norm was applied in a specific situation.

Nonetheless, the factual circumstances of the case may have an indirect impact on constitutional proceedings, as they help to identify problematic aspects of legislative regulation and formulate the subject of constitutional review. In addition, the practice of applying the disputed norm by courts may indicate systemic problems of legal regulation and influence the conclusions of the Constitutional Court regarding the need for legislative changes. However, this does not mean that the constitutionality of a norm depends on the circumstances of a specific case; rather, it is assessed solely through the prism of its compliance with the Fundamental Law of Ukraine.

2. Constitutional complaint

The subject of the complaint in accordance with Article 55 of the Law on the Constitutional Court of Ukraine may be the law of Ukraine (its individual provisions) that was applied in the final court decision in the case of the subject of the right to a constitutional complaint. The subjects of the right to a constitutional complaint, in accordance with Article 56 of the Law on the Constitutional Court of Ukraine, may be an individual or a legal entity of private law. The conditions for the admissibility of a constitutional complaint are defined in Article 77 of the Law on the Constitutional Court of Ukraine: all national legal remedies must be exhausted; no more than three months have passed since the date of entry into force of the final court decision; the appealed law was applied in the final court decision in the case of the complainant. Procedural aspects include requirements for the form and content of the complaint⁸⁸, the procedure for consideration⁸⁹, and the possibility of an interim order⁹⁰.

Importantly, the peculiarities of the appeal are that only the law can be appealed, not the court decision, while the constitutionality of the substantive or procedural law that was applied in the case is being appealed, and subordinate regulatory legal acts are not subject to appeal.⁹¹

Both forms of control (control over norms and constitutional complaint) are regulated by the Constitution (Section XII), the Law of Ukraine “On the Constitutional Court of Ukraine”, the Regulations of the Constitutional Court of Ukraine, and internal acts of the Constitutional Court of Ukraine on the organisation of the consideration of cases. The decisions of the Constitutional Court of Ukraine based on the results of both types of proceedings are binding, final, and cannot be appealed⁹².

88 Article 74 of the Law on the Constitutional Court of Ukraine.

89 Law on the Constitutional Court of Ukraine, Chapter 9.

90 Article 78 of the Law on the Constitutional Court of Ukraine.

91 Селіванов, вграфов [Selivanov and Yevhrafov], 2003, pp. 80–82.

92 Art. 151-2 of the Constitution.

In the Ukrainian legal system, the protection of fundamental rights is carried out by the Constitutional Court of Ukraine and by courts of general jurisdiction, which have their own specific powers and mechanisms for such protection. Although courts of general jurisdiction do not have the right to independently declare laws unconstitutional (this is the exclusive competence of the Constitutional Court of Ukraine), they play an important role in ensuring the constitutional rights of citizens through various procedural mechanisms and by the direct application of the norms of the Constitution. For example, a court of general jurisdiction may apply to the Supreme Court to resolve the issue of a submission to the Constitutional Court of Ukraine on the constitutionality of a law or its individual provisions. The Supreme Court, having considered such an application, may apply to the Constitutional Court of Ukraine with a submission on the constitutionality of the law, or refuse to apply to the Constitutional Court of Ukraine by providing appropriate legal justifications.

The role of courts in the direct application of the norms of the Constitution⁹³ is also important. Courts apply the norms of the Constitution as norms of direct action, and when considering cases, they assess the content of any law or other regulatory legal act from the point of view of its compliance with the principles of human rights protection. Courts of general jurisdiction may also apply the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the ECHR as a source of law. Additionally, courts of general jurisdiction ensure the protection of constitutional rights by doing the following: considering cases of administrative offenses that infringe on constitutional rights; considering civil claims for compensation for damage caused by violations of constitutional rights; exercising judicial control over compliance with human rights when conducting operational-search activities and pre-trial investigations; reviewing court decisions in connection with the establishment by an international judicial institution of a violation of Ukraine's international obligations.

When administering justice, these courts are obliged to consider the decisions of the Constitutional Court of Ukraine, apply laws and other legal acts in a manner that does not contradict the Constitution, and in the event of inconsistency of a regulatory legal act with the Constitution, apply the norms of the Constitution as norms of direct action.⁹⁴ Still, the application of the norms of the Constitution as norms of direct action – instead of unconstitutional provisions of regulatory acts – is a complex legal mechanism that requires a careful approach from the courts. In cases where a constitutional norm contains sufficiently specific instructions to resolve a legal issue, such application is justified and lawful. For example, if a law provides for a restriction of a fundamental right in a manner that contradicts

93 Art. 8 of the Constitution.

94 Зубенко [Zubenko], 2014, pp. 13–15.

the Constitution, the court may directly apply the relevant constitutional norm that guarantees this right. However, the problem arises in situations where constitutional provisions are of a general, declarative nature and do not contain a specific mechanism of legal regulation. In such cases, the direct application of constitutional norms may indeed approach judicial lawmaking, especially if the court is forced to specify abstract constitutional principles or fill legal gaps. This problem is complicated by the lack of a clear mechanism for reviewing court decisions after recognising laws as unconstitutional, which creates legal uncertainty. The courts are faced with a dilemma here: on the one hand, they are obliged to ensure the supremacy of the Constitution; on the other, they cannot go beyond their powers, replacing the legislator in the creation of legal norms.

The optimal solution to this problem could be the introduction of a clear legislative mechanism that would regulate the procedure for the application of constitutional norms of direct effect, and provide for a system that enables the reviewing of court decisions in cases where the applied laws are recognised as unconstitutional. This would allow the courts to effectively ensure the constitutionality of law enforcement without resorting to dubious practices of judicial lawmaking from the point of view of the separation of powers.

To understand the effectiveness of constitutional proceedings in Ukraine, it is important to analyse statistical data on the Constitutional Court of Ukraine as it implements its powers. An analysis of quantitative indicators for various types of proceedings allows us to assess the real burden on the Court and determine areas of priority for its activities. According to the official website of the Court and annual reports, the statistics for cases on constitutional submissions (abstract control) show the following results: in 2021, 18 constitutional submissions were considered; in 2022, 12 constitutional submissions; in 2023, 3 constitutional submissions. Regarding constitutional complaints, statistics show significantly higher numbers, as in 2021, 484 constitutional complaints were received; in 2022, 111 constitutional complaints; in 2023, 412 constitutional complaints. Among all constitutional complaints, about 75% do not meet the admissibility requirements, about 20% are accepted for consideration, and only 5% of complaints are concluded with a decision on the merits.

In the field of prior control (*ex ante*), the Constitutional Court of Ukraine considers an average of 2–3 cases per year on the review of draft laws on amendments to the Constitution, 1–2 cases per year on the review of international treaties, and cases on the review of referendum issues are rare (1–2 in several years). Subsequent control (*ex post*) makes up the bulk of the work of the Constitutional Court of Ukraine, including an average of 15–20 cases per year on constitutional submissions and 8–10 cases per year on constitutional complaints.

In the structure of the workload of the Constitutional Court of Ukraine, the largest weight is given to the consideration of constitutional complaints (about 60% of the total workload), consideration of constitutional submissions on the

constitutionality of laws (about 30%), and prior control and other types of proceedings (about 10%).

Importantly, the Constitutional Court of Ukraine does not consider the so-called “true” constitutional complaints that directly challenge court decisions, as this is not provided for by Ukrainian law. A constitutional complaint can only concern the constitutionality of the law that was applied in the final court decision in the complainant’s case.⁹⁵

Regarding constitutional complaints, among all submitted applications, about 40% are rejected at the preliminary examination stage; in about 35% of cases the initiation of proceedings is refused; only about 25% of cases are considered on the merits and are fully or partially satisfied. Regarding constitutional complaints, the situation demonstrates an even stricter selection, whereby about 75% of complaints are rejected due to non-compliance with formal requirements or the initiation of proceedings is refused after preliminary examination; only 20% are accepted for consideration; only 5% of the total number of submitted complaints is satisfied on the merits.

When carrying out prior control (*ex ante*), about 70% of draft laws on amendments to the Constitution are recognised as meeting constitutional requirements, almost 100% of international treaties are recognised as constitutional, and only about 50% of referendum issues are recognised as meeting the Constitution. In the area of subsequent control (*ex post*) and review of constitutional complaints, about 30% of cases considered on the merits result in the recognition of acts as unconstitutional in whole or in part, while about 70% of acts are recognised as constitutional. For the consideration of constitutional complaints on the merits, only about 15% result in the recognition of provisions of laws as unconstitutional, while in 85% of cases the complaint is rejected.⁹⁶

Worthy of note is that the statistics provided here relate to different categories of cases within the framework of constitutional review. The first indicator (30% of recognition of acts as unconstitutional) covers all types of regulatory legal acts that may be subject to constitutional review on constitutional complaints, including by-laws, acts of local government bodies, and other lower-level regulatory acts. The second indicator (15% of recognition of provisions of laws as unconstitutional) relates exclusively to laws as acts of higher legal force, which traditionally have a higher level of constitutional presumption and undergo a more thorough legislative procedure. This difference in statistics reflects the objective reality: by-laws more often contain constitutional violations owing to their adoption following a less formalised procedure and their development paying less

95 Конституційний Суд України [Konstytutsiinyi Sud Ukrainy] [Online]. Available at: https://heyzine.com/flip-book/fb8f6c4493.html?fbclid=IwY2xjawM40MdleHRuA2FlbQIxMABicmlkETEWt09oYU5vU1FWSzlNbUtuAR5MQ-hu7Hv7qYr0n8YGptRfZkBPt0tnFGNI7hYRh4lAdSE6lewCjO6ykuOmXg_aem_25llnuLjwmFdNXgBfnCCfg#page/8 (Accessed: 20 April 2026).

96 Ibid.

attention to constitutional compliance, while laws adopted by parliament usually undergo more thorough legal examination.

The role of the President of the Constitutional Court of Ukraine can be defined as “*first among equals*” (*primus inter pares*), which is enshrined in the Constitution and the Law of Ukraine “On the Constitutional Court of Ukraine”. In accordance with Article 33 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the President of the Constitutional Court of Ukraine has the following powers: 1) exercises general management over the organisation of the work of the Court and the Secretariat of the Court; 2) convenes meetings and special plenary sessions of the Court, as well as meetings and plenary sessions of the Grand Chamber; 3) presides over meetings and special plenary sessions of the Court, as well as meetings and plenary sessions of the Grand Chamber; 4) is a member of one of the senates and presides over its meetings; 5) disposes of budget funds for the maintenance and support of the Court’s activities in accordance with the budget approved by the Court, and controls the effectiveness of the use of these funds by the Secretariat of the Court.

According to Article 66 of the Law on the Constitutional Court of Ukraine, a decision is considered adopted if at least 10 judges of the Constitutional Court of Ukraine voted for it. In the event of an equal distribution of votes in making decisions, the Chairman of the Constitutional Court of Ukraine does not have the right to cast a casting vote. Thus, the role of the Chairman of the Constitutional Court of Ukraine is more administrative and organisational than dominant in the decision-making process of the Court.

In the structure of constitutional proceedings, the role of the judge-rapporteur and the interaction with the advisory staff are of great importance for the quality and efficiency of the consideration of cases in the Constitutional Court of Ukraine. Thus, the role of the judge-rapporteur is regulated by the Law “On the Constitutional Court of Ukraine” (Article 59), and includes the following: studying the case materials and preparing them for consideration; requesting the necessary documents and materials; involving experts and specialists, if necessary; preparing a draft decision or opinion of the Court; reporting on the case at a plenary session. According to Article 30 of the Law “On the Constitutional Court of Ukraine”, a judge of the Constitutional Court has two scientific consultants and an assistant, whose positions belong to the positions of the patronage service. As for interaction with the advisory staff, practice shows that legal positions and draft decisions are initially prepared by the scientific consultant and assistants to judges; the judge-rapporteur has complete freedom to accept or reject the proposals of the advisory staff. Accordingly, the advisory staff provides analytical and technical support, but does not determine the content of the decision. In practice, the extent to which the advisory staff’s position is considered depends largely on the professional authority of individual staff members, the complexity of the case, and the personal working style of the judge-rapporteur.

In the Ukrainian legal system, the interactions between courts of general jurisdiction and the Constitutional Court of Ukraine follow clearly defined forms and mechanisms regulated by the Constitution and relevant laws. The main forms of interaction are as follows: the mechanism of appeal of courts to the Constitutional Court of Ukraine through the Supreme Court occurs in the event that a court of general jurisdiction, when considering a case, comes to the conclusion that a law or other legal act contradicts the Constitution of Ukraine; courts of general jurisdiction are obliged to apply the decisions and conclusions of the Constitutional Court of Ukraine as a source of law. All decisions of the Constitutional Court of Ukraine are mandatory for execution by all courts of Ukraine; the Constitutional Court of Ukraine cannot interfere in the process of justice in courts of general jurisdiction and cannot review their decisions; in the event of a constitutional complaint, the Constitutional Court of Ukraine may declare the law that was applied in the final court decision unconstitutional, but cannot cancel the court decision itself; the decision of the Constitutional Court of Ukraine on the unconstitutionality of a law is the basis for reviewing court decisions in connection with exceptional circumstances in the manner established by procedural legislation.

These delineations showcase that the relations between courts of general jurisdiction and the Constitutional Court of Ukraine are built on the principles of delimitation of competence, bindingness of the Constitutional Court of Ukraine's decisions, and procedural interactions through mechanisms established by law.⁹⁷

Today, in Ukraine, various circumstances affect the effectiveness of the protection of fundamental human and civil rights and freedoms. Some of the main problems that create obstacles to the full implementation of these rights are discussed below: in the context of the military aggression by Russia and its occupation of parts of the territory of Ukraine, it is impossible to provide judicial protection in the occupied territories, there are difficulties with the execution of court decisions under martial law, and there are also objective restrictions on certain rights under martial law; in the field of execution of European Court of Human Rights decisions, there are problems with the payment of just satisfaction, insufficient implementation of general measures to eliminate systemic violations, and long terms of execution of decisions owing to budgetary restrictions; in the institutional sphere, contradictions periodically arise between the positions of the Constitutional Court of Ukraine and the Supreme Court, there is an uneven application of the legal positions of the Constitutional Court of Ukraine by courts of different instances, and there are also cases of non-execution or delay in the execution of Constitutional Court of Ukraine decisions by the authorities; some systemic problems of the judicial system include the excessive length of court

97 Єзеров [Yezerov], 2019.

proceedings, insufficient staffing of courts with judges, and problems with the execution of court decisions; legislative gaps are manifested in the absence of a clear mechanism for reviewing court decisions after recognising laws as unconstitutional, the imperfection of the constitutional complaint procedure, and limited access to constitutional justice; resource constraints are manifested through the insufficient financing of the judicial system, limited opportunities for improving the qualifications of judges, and technical problems with access to justice in certain regions; political influence is manifested in attempts to pressure judges, delay the process of renewing the composition of courts, and the ineffectiveness of mechanisms to ensure judicial independence; in the area of legal culture, there is insufficient awareness among citizens about the mechanisms for protecting rights, a low level of trust in the judicial system, and insufficient legal certainty in some areas.⁹⁸

Decisions of the Constitutional Court of Ukraine on the unconstitutionality of legal acts have significant legal consequences for the entire legal system of the state. They affect the validity of specific legal norms and may also require systemic changes in legislation and revisions of court decisions. Let us consider in detail the main legal consequences of such decisions of the Constitutional Court of Ukraine.⁹⁹

According to Article 91 of the Law of Ukraine “On the Constitutional Court of Ukraine”, laws and other acts recognised as unconstitutional shall lose their validity from the date of adoption of the Constitutional Court of Ukraine decision on their unconstitutionality, unless otherwise established by the decision itself, but not earlier than the date of its adoption. In the event of recognition of a law as unconstitutional, the legal norm loses its validity and is not subject to application. Such a decision of the Constitutional Court of Ukraine opens up the possibility of reviewing court decisions in exceptional circumstances. The authorities are obliged to bring the legislation into line with the Constitution.

Additionally, if the Constitutional Court of Ukraine identifies a legislative gap, it may indicate the need for the legislative regulation of the relevant legal relations. In such a case, the Constitutional Court may also provide recommendations on the method of temporary regulation until the necessary changes are made. The Constitutional Court has the right to establish the procedure for applying other legal norms until the gap is eliminated.

Regarding the possibility of reviewing court decisions, persons whose court decisions were based on an unconstitutional law have the right to review the case. Such review is carried out according to the rules of the relevant procedural code. In the system of courts of general jurisdiction, after the Constitutional Court’s decision, the court of first instance reconsiders the case taking into account the

98 Голодник [Golodnyk], 2023, pp. 56–57.

99 Білоусов, Івановська [Bilousov and Ivanovska], 2006, pp. 34–35.

Constitutional Court's decision. Importantly, the right to review a court decision after the decision of the Constitutional Court of Ukraine on the unconstitutionality of a law is not automatic, but rather conditioned on the presence of exceptional circumstances in the understanding of procedural legislation. Exceptional circumstances in this context are the decision of the Constitutional Court of Ukraine on the recognition of the law or its individual provisions as unconstitutional, on the basis of which the court decision was adopted.

According to the provisions of the procedural codes of the Criminal Procedure Code of Ukraine (CPC) and the Code of Administrative Procedure of Ukraine (CAPU), exceptional circumstances are those that could not have been known to the person filing the application at the time of consideration of the case and which, by themselves or together with previously established circumstances, prove the incorrectness of the court decision. The decision of the Constitutional Court of Ukraine on the unconstitutionality of the norm applied by the court creates a legal basis for such a review. Thus, the right to review arises if there is a set of conditions: 1) the existence of a final court decision; 2) its adoption on the basis of a norm subsequently recognised as unconstitutional; 3) compliance with procedural requirements regarding deadlines and procedure for applying. It is important to note that in Ukraine, the Constitutional Court does not have the authority to directly overturn court decisions, since a constitutional complaint can only be filed regarding the constitutionality of a law, and not regarding the court decision as such.¹⁰⁰

3. Human Rights Institutions in Central and Eastern European Countries, Also Known As National Human Rights Institutions

In Ukraine, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights (Ombudsman of Ukraine) is the main National Human Rights Institutions. The Ombudsman's Office has the "A" status from the Global Alliance of National Human Rights Institutions (also known as GANHRI), confirming its full compliance with the Paris Principles. Other institutions in Ukraine are engaged in the protection of human rights, but they do not have the formal status of National Human Rights Institutions in accordance with the Paris Principles. These include the Commissioner of the President of Ukraine for the Rights of the Child, the Government Commissioner for Gender Policy, and the Commissioner for Persons with Disabilities. Therefore, the Ombudsman is the only official National Human Rights Institution in Ukraine that fully complies with the criteria of the Paris Principles, in particular regarding: independence from government (independence); a broad mandate to protect human rights (pluralism); sufficient funding; an inclusive

100 Мартинюк [Martyniuk], 2008, pp. 4–5.

(access) and transparent appointment process (broad mandate); the ability to collaborate with civil society and international organisations (cooperation). Lets look at these six main pillars in more detail.¹⁰¹

■ 3.1. *Independence*

3.1.1. *In Law*

The status of the Ombudsman of Ukraine is enshrined in the Constitution (Article 101),¹⁰² and the activities are regulated by a special Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights”.¹⁰³ The principle of non-interference by state authorities in the activities of the Ombudsman is enshrined in law. The Ombudsman has immunity from criminal prosecution, detention, or arrest without the consent of the Verkhovna Rada.

3.1.2. *In Leadership*

The Ombudsman of Ukraine is appointed by the Verkhovna Rada of Ukraine by secret ballot. Nominations may be submitted by the Chairman of the Verkhovna Rada or by at least 1/4 of the people’s deputies. The term of office is five years with the right to reappointment. There are clear qualification requirements, which are being aged of 40 years or older, having experience in human rights activities, and a high moral character. However, the process does not provide for direct public participation in the nomination of candidates.

3.1.3. *In Operation*

The Ombudsman of Ukraine independently determines the areas of his/her work, has the right to open proceedings on his/her own initiative, forms his/her own secretariat and appoints representatives, develops the structure of the office and approves work plans, and may create advisory councils and expert groups.

3.1.4. *In Policy*

The Ombudsman of Ukraine has the right to appeal to the Constitutional Court; submits annual and special reports to the parliament; provides independent recommendations to government bodies; has the right of unhindered access to all institutions and documents; is not obliged to coordinate his/her conclusions with any bodies.¹⁰⁴

101 Бурлак [Burlak], 2010, p. 8.

102 Konstytucia Ukrainy.

103 Pro Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny: Zakon Ukrainy, 23 December 1997, No. 776/97-BP.

104 Цісар [Tsisar], 2019, p. 188.

3.1.5. *Financially*

The Ombudsman of Ukraine is funded from the State Budget of Ukraine under a separate budget item. He/she independently manages funds within the approved budget, and may receive international technical assistance. However, of course, the level of funding depends on the decision of the parliament, which may create certain risks to independence.¹⁰⁵

■ 3.2. *Pluralism*

3.2.1. *To Reflect Society*

The structure of the Office of the Ombudsman of Ukraine includes representatives from various areas of human rights protection. Specialised departments have been created to deal with the rights of children, people with disabilities, national minorities, and internally displaced persons. However, the mechanism for ensuring pluralistic representation of different social groups needs to be improved.

3.2.2. *Among Leaders and Staff*

The Secretariat of the Commissioner is staffed by both men and women, including in management positions. However, there are no clear quotas or requirements regarding gender balance and representation of different ethnic, religious, or disabled groups. The statistics on staff diversity are not publicly available.

3.2.3. *In Legislation*

The Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights” does not contain any special provisions on ensuring pluralism in the staff formation. There are no legislative requirements for the representation of different social groups among the institution’s employees nor criteria for assessing such representation.

3.2.4. *In Appointment Processes*

Appointments to positions in the Secretariat are made according to the general legislation on civil service. Information about vacancies is published on the official website and the civil service vacancies portal, but no special measures are envisaged to encourage diversity among candidates.

3.2.5. *In Consultations*

The Ombudsman has advisory councils and expert groups that include representatives of public organisations of various orientations. Regular consultations are held with civil society organisations representing the interests of different social

105 Марцеляк [Martseliak], 2004, pp. 55–58.

groups. The Ombudsman has regional representatives to better cover different territorial communities.¹⁰⁶

■ 3.3. Cooperation

3.3.1. *With the Parliament*

The Commissioner submits annual reports to the Verkhovna Rada on the state of human rights observance in Ukraine; participates in parliamentary hearings; provides opinions on draft laws in the field of human rights; has the right of legislative initiative; may apply to the Constitutional Court regarding the compliance of laws with the Constitution.

3.3.2. *With the Government*

The Ombudsman provides recommendations to the Ukrainian Government on the national implementation of international obligations in the field of human rights, as well as participates in the preparation of national reports to international monitoring bodies and monitors the implementation by Ukraine of decisions of the European Court of Human Rights.¹⁰⁷

3.3.3. *With Civil Society*

The Ombudsman has a Coordination Council for Interaction with Public Organizations and holds regular consultations with human rights organisations. The Ombudsman also implements joint projects for monitoring compliance with human rights observance, and supports the activities of public monitors.¹⁰⁸

3.3.4. *With the Judicial System*

The Commissioner has the right to represent the interests of citizens in courts, submit constitutional submissions, and participate in legal proceedings as a third party. He/she also provides opinions on the observance of human rights in judicial practice and cooperates with the High Council of Justice.¹⁰⁹

3.3.5. *With International Human Rights Mechanisms*

The Ombudsman interacts with United Nations treaty bodies, special procedures of the United Nations Human Rights Council, and the Council of Europe. He/she also partakes in the preparation of alternative reports and provides information on human rights violations to international organisations.¹¹⁰

106 Тенебаум [Тенеbaum], 1999, pp. 101–103.

107 Пирога, Кадебська [Pyroga and Kadebska], 2023, pp. 21–23.

108 Ozel, 2020, pp. 100–101.

109 Косюта [Kosiuta], 2002, p. 10.

110 Konstytucja Ukrainy.

3.3.6. *With Other Human Rights Bodies*

The Ombudsman cooperates with the Commissioners for the Rights of the Child, on gender policy issues, and on cases of persons with disabilities. There is also cooperation with the National Preventive Mechanism and other specialised institutions in the field of human rights.¹¹¹

3.3.7. *Partnership*

The Ombudsman is a member of the European Network of National Human Rights Institutions (also known as ENNHRI) and the Global Alliance of National Human Rights Institutions (also known as GANHRI). He/she has memorandums of cooperation with leading universities, the National Bar Association of Ukraine, and media organisations, as well as implements joint projects with the Office of the United Nations High Commissioner for Human Rights and other international organisations.¹¹²

■ 3.4. Access

3.4.1. *Financial Access*

Applying to the Ombudsman is free of charge, and the office provides basic legal advice to applicants. However, the limited funding does not allow for full legal assistance in all cases. The Ombudsman cooperates with the free legal aid system to ensure the legal protection of vulnerable groups.

3.4.2. *Physical Access*

The Ombudsman's central office and regional offices are partially equipped for access by people with disabilities (e.g. with ramps and elevators). However, not all premises fully comply with accessibility standards, and there are no specially equipped toilets and other elements of universal design in some offices.¹¹³

3.4.3. *Geographic Access*

A network of regional offices of the Ombudsman operates in different regions of Ukraine, where regional public relations coordinators are engaged. Field visits of citizens in remote settlements are carried out, and under the current war conditions, additional access points have been created for internally displaced persons.

111 Косінов [Kosinov], 2015, pp. 5–6.

112 Майданник [Maidannyk], 2010, pp. 14–15.

113 Марцеляк [Martseliak], 2003, pp. 66–67.

3.4.4. *Through Staffing*

The Secretariat employs representatives from different regions of Ukraine, and gender balance is ensured among employees. However, there are no clear quotas for the representation of national minorities and other social groups, and there is a shortage of employees who speak the languages of national minorities.

3.4.5. *Through Communication*

The Ombudsman's hotline is operational. Applications are accepted via e-mail and the website, with information being provided in Ukrainian and partly in English. However, there are no materials in the languages of national minorities and in formats accessible to people with visual and hearing impairments. Online services and mobile applications are underdeveloped.¹¹⁴

■ 3.5. *Funding*

3.5.1. *Adequate Funding*

The Ombudsman is funded from the State Budget of Ukraine, albeit the level of funding often does not meet the real needs of the institution. Budgetary allocations do not fully consider the expansion of the Ombudsman's functions and the increase in the number of citizens' appeals, especially in times of war.

3.5.2. *Allocations For Activities*

Despite the assignment of additional functions (e.g. as a national preventive mechanism), a corresponding increase in funding has not been provided, limiting the possibilities of conducting monitoring visits, training events, and information campaigns.

3.5.3. *Staffing and Recruitment*

The limited funding affects the possibility of attracting highly qualified specialists owing to the uncompetitive level of salaries. There are also problems with training and advanced training of personnel, and the staffing does not correspond to the real workload of employees.

3.5.4. *Accessible Premises and Communication System*

The funding does not fully ensure the creation of a barrier-free environment in the office premises. There is a lack of funds for the modernisation of communication systems, the development of online services, and ensuring the accessibility of information for different population groups.

114 Yurydichna encyklopedya, 2004, p. 61.

3.5.5. *Autonomy*

Although the expenses for the activities of the Commissioner are determined by a separate line in the state budget, there are problems with the timeliness of the funding and restrictions on the redistribution of funds between expenditure items. The financial dependence on parliamentary decisions may affect institutional independence.

3.5.6. *Accountability*

The Ombudsman reports annually to the parliament on the use of budget funds, and an external audit of the financial activities is conducted. Information on the use of funds is published on the official website. However, the format of the financial reporting is not always sufficiently detailed and understandable for the public.¹¹⁵

■ 3.6. *Broad Mandate*

3.6.1. *Powers of the Ombudsman of Ukraine*

The powers of the Ombudsman are enshrined in the Constitution and the Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights”.¹¹⁶ The mandate covers the protection of the entire spectrum of human rights, being them civil, political, economic, social, and cultural rights. The Ombudsman exercises parliamentary control over the observance of constitutional rights and freedoms.¹¹⁷

3.6.2. *Raising Awareness*

The Ombudsman has the right to conduct educational activities on human rights, as well as organise educational programs and trainings. He/she also carries out publishing activities to disseminate information on human rights, conducts information campaigns, and can do so in cooperation with educational institutions.

3.6.3. *Monitoring and Reporting*

The Ombudsman constantly monitors the state of observance of human rights, prepares annual and special reports, provides recommendations to authorities on eliminating identified violations and improving legislation, and monitors the implementation of recommendations.¹¹⁸

115 Instytut ombucmena.

116 Pro Uprovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny: Zakon Ukrainy, 23 December 1997, No. 776/97-BP.

117 Ткаліч [Tkalic], 2010, pp. 201–202.

118 Марцеляк [Martseliak], 2002, pp. 32–33.

3.6.4. *Review of Actions*

The Ombudsman has the authority to review human rights violations by both state bodies and private entities, may initiate proceedings on his/her own initiative and respond to individual complaints, and monitors business activities regarding compliance with human rights.

3.6.5. *Inspections*

The Commissioner has the right to visit places where there is alleged deprivation of liberty, and state institutions and local government bodies without prior notice. He/she is also granted access to any documents and materials necessary for inspections and may get experts and public monitors involved in inspection visits.

3.6.6. *Investigation*

The Ombudsman has the right to investigate human rights violations (e.g. actions by law enforcement agencies, military, and special services), may demand explanations from officials, receive necessary documents and materials and is not limited by departmental barriers when conducting investigations.¹¹⁹

119 Барабаш [Barabash], 2004, p. 8.

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прав людини щодо відповідності Конституції України (конституційності) положень частини п'ятої статті 21 Закону України «Про свободу совісті та релігійні організації» (справа про завчасне сповіщення про проведення публічних богослужінь, релігійних обрядів, церемоній та процесій) [u spravi za konstytutsiinym podanniam Uprovnozazhenoho Verkhovnoi Rady Ukrainy z prav liudyny shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen chastyny piatoi statti 21 Zakonu Ukrainy «Pro svobodu sovisti ta relihiini orhanizatsii» (sprava pro zavchasne spovishchennia pro provedennia publichnykh bohosluzhin, relihiinykh obriadiiv, tseremonii ta protsesii)] [Online]. Available at: <https://zakon.rada.gov.ua/laws/show/v006p710-16#Text> (Accessed: 5 November 2025).

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