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**2<sup>nd</sup> EUROPEAN CONFERENCE OF JUDGES**

**“JUSTICE AND THE MEDIA”**

**National report**

**prepared by  
the delegation of Ukraine**

Ukraine proclaimed itself on the constitutional level a sovereign, independent, democratic, social and legal state, in which, according to article 3 of the Constitution of Ukraine, the rights and freedoms of a person and its guarantees determine the context and direction of the activity of the state. Therefore at the level of the main law of the State a new approach to interrelations between the State and a person was determined with human rights the priority.

Among the main human rights in international society there is the right (foreseen by the article 10 of the General Declaration on Human Rights) of each person to a just and public trial at a reasonable term by a fair and impartial court, created on the base of law. This right is fixed in different international legal acts: in article 14 of the international pact on civil and political rights (1966); article 6 of the European Convention on Human Rights (1950), ratified by Ukraine on 17 July 1997.

In the period of the “Orange Revolution”, which became the symbol of the fight of the people for their own rights and convictions despite the wish of authorities not to permit it the sense of justice of the most of citizens concurred with the court.

The Verdict of the Supreme Court of Ukraine of 03.12.2004 about the abolition of the resolution of the Central electoral Commission about the election of the President of Ukraine on 21 November 2004 became remarkable and unprecedented because it brought the electoral process into the legal field.

As expected this verdict of the Supreme Court of Ukraine is perceived in different ways. But if we distance ourselves from appealing against the results of the elections, which certain pursued political aim, and focus our attention on some legal aspects, we can note that the Supreme Court of Ukraine proved the high authority of the judicial power, and concerning the case – the high social value of the judicial procedures.

According to article 124 of the Constitution of Ukraine the jurisdiction of the courts covers all legal relations in the state. It means that there is not and cannot be a dispute which couldn't be the subject of a trial, even if in certain laws the possibility of appeal to the court is not foreseen.

According to article 13 of the Convention everyone, whose rights and freedoms are broken has the right to an affective way of protection by a national body, even if such a breach is made by a person who acts as official.

In Ukraine according to part 1 of article 8 of the Constitution the definition and action of the principle of the supremacy of the law is proclaimed.

The principle of the supremacy of the law turns the court from the passive guide of the law into active protector of the freedoms, rights and interests of the person, sometimes even from the law if it contradicts the constitutional and conventional norms of Human Rights. “The judge stands guard over the right even against the law” – said academician S. Dnistrianskiy at the beginning of the 20<sup>th</sup> century.

This spirit of change has not left judges unmoved. The judge of the Supreme Court of Ukraine D. Lilack thinks “we can tell about the orientation of the public view onto the “natural legal” mood”.

Such moods began to form in the judicial corps not only under the influence of the article 8 of the Constitution. It was promoted by studying the international conventions and verdicts of the European Court of Human Rights.

The principle of the supremacy of the law gave the possibility for the Supreme Court of Ukraine to find the way out of the situation: repair the repeated voting, though it wasn't foreseen by the law “About election of the President of Ukraine”.

The experience of coverage of the process was no less interesting.

The complaint of the accredited representative of V. Yushchenko was considered by the full complement of the Court chamber in civil cases. It gave the opportunity to ensure independence of judges, to strengthen the authority of the verdict and respect it.

Publicity of the trial means not only interested parties but also other citizens had the right to be present in the court-room.

Broadcasting and televising of cases which have great public interest should be welcomed. In this case it gave the opportunity not only in Ukrain but also for the citizens of other countries to appreciate the dimensions of the breaches of the electoral legislation.

Everybody could see the disrespect of the main political right – the right to elect the head of the state freely. Cognitive and educative influence of this process is incontrovertible. It will not only be a kind of academic text-book on application of norms of civil procedure law, but also a warning for those who want to infringe the Constitution and electoral legislation.