

## SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: Zoe Bryanston-Cross  
Tel: 03.90.21.59.62

Date: 29/06/2020

**DH-DD(2020)576**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1383<sup>d</sup> meeting (29 September - 1 October 2020) (DH)

Item reference: Action Plan (25/06/2020)

Communication from Ukraine concerning the Group of cases of OLEKSANDR VOLKOV v. Ukraine  
(Application No. 21722/11)

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1383<sup>e</sup> réunion (29 septembre - 1 octobre 2020) (DH)

Référence du point : Plan d'action (25/06/2020)

Communication de l'Ukraine concernant le groupe d'affaire OLEKSANDR VOLKOV c. Ukraine  
(requête n° 21722/11) (*anglais uniquement*)

---

25 JUIN 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH



**МІНІСТЕРСТВО  
ЮСТИЦІЇ  
УКРАЇНИ**

вул. Архітектора Городецького, 13,  
м. Київ, 01001, Україна  
тел.: (044) 364-23-93  
факс: (044) 271-17-83  
E-mail: [callcentre@minjust.gov.ua](mailto:callcentre@minjust.gov.ua),  
[themis@minjust.gov.ua](mailto:themis@minjust.gov.ua),  
Web: <http://www.minjust.gov.ua>  
код згідно з ЄДРПОУ 00015622

**MINISTRY  
OF JUSTICE  
OF UKRAINE**

13, Horodetskogo Arkhitektora St., Kyiv,  
01001, Ukraine  
tel.: (044) 364-23-93  
fax: (044) 271-17-83  
E-mail: [callcentre@minjust.gov.ua](mailto:callcentre@minjust.gov.ua),  
[themis@minjust.gov.ua](mailto:themis@minjust.gov.ua),  
Web: <http://www.minjust.gov.ua>  
код згідно з ЄДРПОУ 00015622

**Ms Clare Ovey**

**Head of Department Ad Interim  
Department for the execution of judgments  
of the European Court of Human Rights  
Directorate General 1 – Human Rights  
and Rule of Law**

Council of Europe  
F-67075 Strasbourg Cedex

*As to the execution of the Court's judgments in group of cases  
"Oleksandr Volkov v. Ukraine"*

**Dear Madam,**

Herewith please find enclosed the Government of Ukraine Updated Action Plan for the execution of the European Court of Human Rights judgments in the group of cases "Oleksandr Volkov v. Ukraine" (application no. 21722/11, judgment final on 27 May 2013).

This information has been also sent by e-mail.

Encl: on 24 pages.

**Yours faithfully,**

**Ivan LISHCHYNA  
Deputy Minister – Agent before  
the European Court of Human Rights**



UB  
Міністерство юстиції України  
№5247/5.2.1/25-20 від 25.06.2020  
Ліщина І.Ю. (Заступник Міністра юстиції  
України - Уповноважений у справах  
Європейського суду з прав людини)  
25.06.2020 18:55

DGI

25 JUIN 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## **Execution of Judgments of the European Court of Human Rights**

### **UPDATED ACTION PLAN**

#### **on measures to be taken for implementation of the Court's judgments in the group of cases *Oleksandr Volkov v. Ukraine***

(case of *Oleksandr Volkov v. Ukraine*, application no. 21722/11, judgment final on 27 May 2013,  
case of *Kulykov and others v. Ukraine*, application no. 5114/09, judgment final on 19 April 2017,  
case of *Denisov v. Ukraine*, application no. 76639/11, judgment final on 25 September 2018)

### **I. CASE SUMMARY**

Generally, the group of cases *Oleksandr Volkov v. Ukraine* concern deficiencies in the system of judicial discipline and careers of judges.

In particular, the *Oleksandr Volkov case* concerns four violations of the applicant's right to a fair hearing on account of his unlawful dismissal from his post as a judge at the Supreme Court of Ukraine in June 2010 (Article 6 § 1):

- dismissal proceedings before a body that was not independent or impartial, and lack of effective judicial review;
- absence, in domestic legislation, of a limitation period for the proceedings against the applicant;
- different irregularities in the voting process before Parliament concerning the applicant's dismissal (absence of the majority of MPs, and those present deliberately and unlawfully casting multiple votes belonging to their absent colleagues);
- irregularities in the setting-up and composition of the special chamber of the High Administrative Court dealing with the applicant's case.

The dismissal was also found to amount to a violation of the applicant's right to respect for private life (Article 8) as the interference was not compatible with domestic law and as, moreover, the domestic law did not meet the requirements of foreseeability and did not provide appropriate protection against arbitrariness.

In the case of *Kulykov and Others* the Court found violations of Article 6 § 1 and Article 8 of the Convention similar to its findings in the case of *Oleksandr Volkov*. In particular, the Court found that the domestic bodies dealing with applicants' cases lacked independence and impartiality, and that the subsequent judicial review had not remedied these shortcomings. In addition, the Court found that the applicants' dismissal from their judicial posts was unlawful, being based on legal provisions lacking the requisite "quality of law", i.e. legal certainty.

The *Denisov case* concerns two violations of the applicant's right to a fair hearing due to reasons that the High Council of Justice failed to ensure an independent and impartial examination of the applicant's case, and the subsequent review of his case by the Higher Administrative Court of Ukraine did not put those defects right (Article 6 § 1 of the Convention).

## II. INDIVIDUAL MEASURES

### Restitutio in integrum

As regards implementation of the Court's judgment in the case of "*Kulykov and Others v. Ukraine*", it is worth noting that in para. 147 of the Judgment the Court underlined "... *in many cases where the domestic proceedings were found to be in breach of the Convention, the Court has held that the most appropriate form of reparation for the violations found would be the reopening of the domestic proceedings (see for example, Huseyn and Others v. Azerbaijan, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 262, 26 July 2011)*".

In order to renew to the greatest possible extent the applicants' legal status before the violation of the Convention the Government of Ukraine informed the applicants in *Kulykov and others case* about the possibility to apply for review of the impugned proceedings provided for by the domestic legislation. All the applicants requested quashing of the impugned dismissals. As of today according to the results of the reopened dismissal proceedings in the applicants' cases, the Supreme Court rendered final court decisions in 16 cases, including in *Stasovska*<sup>1</sup> case. The only one review proceeding (*Kulykov case*) is still pending before the Supreme Court's Grand Chamber.

In addition, the Supreme Court sent their cases to the High Council of Justice ("**the HCJ**") for examination of the grounds for possible disciplinary liability, in the context of the review of the applicants as candidates for judicial posts, under the procedures established by new legislative framework for judicial appointments.

It is to be noted that the HCJ is the constitutional body, which has exclusive competence to form the judicial corps. In addition, the Grand Chamber within the Supreme Court considers that re-examination of grounds necessary for application of a disciplinary sanction against the judges by the newly formed body is an effective individual measure and the legal remedy of restoration of the applicants' violated rights (*see Annex I*). According to the information provided in the Annex I to this Action Plan, all dismissal proceedings in the applicants' cases were reopened and decisions on dismissal were re-examined by the Supreme Court or other competent body.

### As regards Denisov case

On 13 June 2019 the CAC partly allowed the applicant's claim, quashed the HCJ's decision of 14 June 2011 No. 400/0/5/15-11 on the dismissal of the applicant from the post of a president of Kyiv Administrative Court of Appeal. On 6 February 2020 the Grand Chamber within the Supreme Court rejected the applicant's and the HCJ's appeals and upheld the Cassation Administrative Court within Supreme Court ("**the CAC**") decision of 13 June 2019, which became final.

---

<sup>1</sup> On 30 January 2020, the Grand Chamber within the Supreme Court rejected the HCJ's appeal and upheld the Cassation Administrative Court within Supreme Court decision of 7 February 2019, which became final.

The Government would like to note that on 20 June 2013 the applicant was dismissed from the post of judge in connection with the resignation. Bearing in mind the fact that domestic proceedings in his case was completed the Government consider that no further individual measures are required in this case.

Information with regard to the judges, dismissed by the Parliament of Ukraine on 29 September 2016 in provided in the *Annex II*, see below.

### III. GENERAL MEASURES

#### *1) Relaunch of judicial reform in 2019 with the Law of Ukraine “On Judiciary and Status of Judges” and Some Laws of Ukraine on the Activity of Bodies of Judicial Governance” No. 193-IX (the “Law No. 193-IX”)*

The Government would like to reiterate that on 16 October 2019 the Parliament of Ukraine adopted the **“Law No. 193-IX”**, which came into force on 7 November 2019. The above Law No. 193-IX introduced major changes in three areas: new rules on the structure and role of HCJ and on the composition and status of the High Qualification Commission of Judges of Ukraine (**the “HQCJ”**); reduction in the number of judges of the Supreme Court and decrease in their salaries; and new rules on disciplinary liability.

In view of the above, the Supreme Court lodged with the Constitutional Court of Ukraine a constitutional submission seeking the recognition of certain articles of the Law of Ukraine “On Judiciary and Status of Judges” as amended by Law of Ukraine No. 193-IX, paragraphs of Section II of “Final and Transitional Provisions” of the Law of Ukraine No. 193-IX and Articles of the Law of Ukraine “On the High Council of Justice” (**“On the HCJ”**) unconstitutional.

It should be noted that laws and other acts are declared unconstitutional in whole or in part by the decision of the Constitutional Court of Ukraine in the event that they do not conform to the Constitution of Ukraine or if there was a violation of the procedure for their consideration, adoption or their entry into force established by the Constitution of Ukraine. Laws, other acts, or their separate provisions, declared unconstitutional, lose legal force from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality unless otherwise established by the decision itself but not earlier than the day of its adoption (Article 152.1-2 of the Constitution of Ukraine).

On 11 March 2020, the Constitutional Court of Ukraine adopted decision No. 4-r/2020 in the case upon the Supreme Court’s constitutional submission<sup>2</sup>.

In this decision, the Constitutional Court reached the following conclusions:

- *As to the reduction in the number of judges of the Supreme Court.* The Constitutional Court of Ukraine noted, *among other things*, that the provisions of the Constitution of Ukraine and the Law of Ukraine “On the HCJ” envisage that the Parliament of Ukraine, as the only legislative body in Ukraine, has the power to change the number of judges of the Supreme Court, if the draft law was submitted by the President of Ukraine after consultation with the HCJ. Failure to comply with this

<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/v004p710-20?lang=en>

constitutional procedure does not address to the principle of separation of state power provided for in Article 6.1 of the Constitution of Ukraine, contradicts the “system of checks and balances” and constitutes an encroachment on the independence of the judiciary. The Constitutional Court emphasised that the Constitution of Ukraine sets out a comprehensive list of grounds for dismissing a judge from the position of judge, which makes it impossible to expand or narrow this list legislatively. In its Decision, the Constitutional Court referred to Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions No 40/32 of 29 November 1985 and No 40/146 of 13 December 1985, and also Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098<sup>th</sup> meeting of the Ministers’ Deputies. In view of the foregoing, the Constitutional Court of Ukraine found the provision of the reduction in the number of judges of the Supreme Court unconstitutional.

- *As to the reducing the salary of the judges of the Supreme Court (from 75 minimum salary to 55).* The Constitutional Court of Ukraine referred to its previous judiciary practice in similar cases, where, *among other things*, it was stated that one of the constitutional guarantees for the independence of judges was the special procedure for financing the courts. The Constitutional Court noted that the reduction in the amount of judges’ remuneration is an encroachment on the guarantee of independence of the judge in the form of financial support and a prerequisite for influencing both the judge and the judiciary as a whole. In its Decision, the Constitutional Court took into account Opinion No. 1 (2001) of the CCJE on standards concerning the independence of the judiciary and the irremovability of judges and the Opinion “On Amendments to the Legal Framework Governing the Supreme Court and Judicial Governance Bodies” No. 969/2019, adopted by the Venice Commission at its 121<sup>st</sup> Plenary Session on 6-7 December 2019. In view of the above, the Constitutional Court concluded that the legislature could not arbitrarily set or change the amount of remuneration for a judge. Therefore, the provision on the reducing the salary of the judges of the Supreme Court is unconstitutional.

- *As to the competition for the position of a member of the HQCJ.* The Constitutional Court of Ukraine noted, *in particular*, that the change of the composition and subjects of appointment of the members of the HQCJ without introducing a transitional period led to the suspension of the performance of constitutional functions regarding the selection and evaluation of judges, the impossibility of the HCJ to exercise its separate constitutional powers. Thus, the said provision is unconstitutional, and, in addition, the decrease in the members of the HQCJ from 16 to 12 is unconstitutional.

- *As to the Integrity and Ethics Commission.* The Constitutional Court found that the Integrity and Ethics Commission had powers to control the activities of members of the HCJ and judges of the Supreme Court, but these powers did not have a constitutional basis. These provisions are unconstitutional, since the HCJ has exclusive powers to hold judges of the Supreme Court liability, and these constitutional powers cannot be delegated to other bodies.

- *As to the reduction of deadlines for disciplinary proceedings.* The Constitutional Court, *inter alia*, took into account the findings of the European Court of Human Rights in the case of “*Oleksandr Volkov v. Ukraine*” and concluded that disciplinary case against a judge must be considered within a reasonable time and with respect for his or her right of defence. In its Decision, the Constitutional Court stated that the said provision is unconstitutional and the legislative amendments “*do not provide reasonable, balanced (proportional) and predictable procedure of the disciplinary proceeding with regards to the judges, fair and transparent procedure of disciplinary liability on a judge*”. The Constitutional Court is of the opinion that the disciplinary proceedings against judges should

be held within an adequate timeframe and according to the procedures that comprehensively guarantee his/her defence.

Paragraph 3 of the operative part of the Constitutional Court Decision states that the relevant provisions of the Laws of Ukraine “On the Judiciary and Status of Judges” and “On the HCJ”, **as amended before the Law of Ukraine No. 193-IX, are subject to application.**

In addition, pursuant to Article 97.1 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the Constitutional Court of Ukraine established the procedure for its implementation in the Decision and **recommended the Parliament of Ukraine to immediately bring the provisions of the legislation of Ukraine in line with this Decision.**

Therefore, the Constitutional Court of Ukraine conducted a full examination of the Law No. 193-IX compatibility with the Constitution of Ukraine, gave priority to this proceeding and completed it without undue delay.

In addition, the Constitutional Court declared unconstitutional the provisions of the Laws of Ukraine “On the Judiciary and Status of Judges” and “On the HCJ”, which were amended by the Law of Ukraine No. 193-IX, and which raised concerns in the Committee of Ministers of the Council of Europe, as also underlined in the recent Opinion of the Venice Commission No. 969/2019, could have potentially adverse and long-lasting effects on the independence of the Supreme Court and its ability to ensure the uniform application of the law by the lower courts.

The Constitutional Court underlined that any decrease in the level of guarantees of independence of judges contradicts the Constitution and the Constitutional Court’s decision clearly indicates that the **judicial reform could continue only if it does not contradict the Constitution and if it takes into account the leading European standards in this field.**

The Government would like to note that paragraphs 187-188 of the Opinion of the decisions of the Constitutional Court of Ukraine No. 2-r/2020 and No. 4-r/2020 of April 2020 adopted by Justice and Legal Cooperation Department Directorate General of Human Rights and Rule of Law<sup>3</sup> envisages that the Constitutional Court’s decision is in general in line with the Council of Europe standards. The analysis indicates that the Constitutional Court’s decision No 4-p/2020 addresses the most important recommendations in the Venice Commission opinion, which refer to the unconstitutionality of the legislative provisions in the Law No. 193-IX.

It is important to note that the Directorate General Human Rights and Rule of Law of the Council of Europe welcomed the decision of the Constitutional Court of Ukraine No. 4-r/2020 of 11 March 2020<sup>4</sup>. In addition, it should be noted that the President of the Venice Commission Mr Gianni Buquicchio also welcomed the decision of the Constitutional Court of 11 March 2020<sup>5</sup> and made the following statement, *among other things*: “*I welcome that the decision of the Constitutional Court of Ukraine of 11 March declares unconstitutional the amendment to the Law on the Judiciary and the Status of Judges which reduced the maximum number of judges in the Supreme Court from 200 to 100. In its Opinion of December 2019, the Venice Commission asked for this provision to be removed.*”

---

<sup>3</sup> <https://rm.coe.int/expert-assessment-ccu/16809e3add>

<sup>4</sup> <http://ccu.gov.ua/novyna/generalnyy-dyirektorat-z-prav-lyudyny-ta-verhovenstva-prava-rady-yevropy-pozytyvno-ocinyv>

<sup>5</sup> <https://www.venice.coe.int/webforms/events/?id=2916>

*... I therefore congratulate the Constitutional Court for its decision, which strengthens the independence not only of the Supreme Court but of the Ukrainian judiciary in general”.*

The Law of Ukraine No. 193-IX introduced amendments to the structure, mandates and membership of the HCJ and the HQCJ.

The old HQCJ, which was in charge of the examination of judges, was dismissed. Once established, the new HQCJ would be more dependent on the HCJ, which might simplify the process of appointment of judges. As to dismissal of the HQCJ and the contradictions with the Constitution established by the Constitutional Court, the new HQCJ can be formed following amendments to Law No. 193-IX, and in compliance with the Constitutional Court decision of 11 March 2020.

It should be noted that the HCJ’s decision No. 793/0/15-20<sup>6</sup> of 17 March 2020 found:

- that it impossible to create the Selection Board for the competition for the position of a member of the HQCJ;
- failure to hold a competition for the position of a member of the HQCJ, announced in accordance with the HCJ’s No. 3474/0/15-19 of 12 December 2019;
- invalidation of the Regulation on holding competition for the position of a member of the HQCJ, approved by the HCJ’s decision No. 3407/0/15-19 of 10 December 2019, as amended by the HCJ’s decision No. 56/0/15-20 of 14 January 2020.

It is worth noting that the decision was influenced by the following factors:

- on 10 March 2020, the deadline for submitting proposals from international experts for membership in the Competition Commission, established by the HCJ’s decision No 297/0/15-20 of 4 February 2020, was expired;
- declaring unconstitutional and invalid by the Constitutional Court decision No 4-r/2020, of Article 94.1 of the Law of Ukraine “On Judiciary and Status of Judges” of 2 June 2016, as amended by the Law of Ukraine No 193-IX.

The Government would like to note that Office of the President of Ukraine prepared draft law that proposes amendments to the Law of Ukraine “On Judiciary and Status of Judges”, the Law of Ukraine “On the HCJ”, the Law of Ukraine “On Amendments to the Law of Ukraine “On Judiciary and Status of Judges”, Some Laws of Ukraine on the Activity of Bodies of Judicial Governance No. 193-IX, and brings certain provisions of the legislative acts in line with the decisions of the Constitutional Court of Ukraine No. 2-r /2020<sup>7</sup> of 18 February 2020, and No. 4-r/2020 of 11 March 2020. This draft Law was transferred to the HCJ for consideration.

---

<sup>6</sup> <https://hcj.gov.ua/doc/doc/2296>

<sup>7</sup> <https://zakon.rada.gov.ua/laws/show/v002p710-20?lang=en>



Following consideration of the draft law, on 26 May 2020 the HCJ decided to approve an advisory opinion on it and to support the above draft law as a whole with the need to refine its individual provisions<sup>8</sup>.

On 22 June 2020, the above Draft Law “On Amendments to the Law of Ukraine “On Judiciary and Status of Judges” and some Laws of Ukraine on the Activities of the Supreme Court and Judicial Governance” was registered in the Parliament of Ukraine as per No 3711<sup>9</sup>.

The proposed amendments can be divided into three blocks:

*I. Subordination of the HQCJ to the HCJ*

The draft law stipulates that the HQJC should consist of 16 members appointed by the HCJ based on the results of a competition for a term of four years. The regulations on the competition are approved by the HCJ itself. Persons who were members of the former High Council of Justice, the HCJ or HQCJ before the adoption of this law will not be able to apply for positions in the HQCJ.

*II. Extension of powers of the HCJ*

The draft law provides for a significant expansion of the HCJ powers. It is also proposed to return the provisions according to which the appointing entity may dismiss a member of the HCJ for violations only upon the submission of the HCJ itself, supported by at least 14 of its members. A member of the HCJ may be dismissed by the HCJ itself only under the health issues or upon application for dismissal. In addition, it was proposed to exclude from the legislation any mention of the Integrity and Ethics Commission.

*III. Adjoining of the Supreme Court of Ukraine to the Supreme Court, and transfer of judges*

The Supreme Court of Ukraine, which ceased to function in 2017, will be adjoined to the Supreme Court, and judges of the Supreme Court of Ukraine will be enrolled in the staff of the relevant courts of cassation of the Supreme Court with their subsequent qualification assessment within a year. At the same time, at the HQCJ’s submissions the HCJ should approve a special procedure and methodology for evaluating the judges. Failure to pass such an assessment will result in the dismissal of the judge.

It is also proposed to exclude from the law on the judiciary a provision that sets the maximum number of judges of the Supreme Court.

The Government would like to note that according to the Law of Ukraine “On Rules of Procedure of the Parliament of Ukraine” the draft law should be processed in the relevant Committees of the Parliament and can be significantly improved during further two readings before adoption of the law.

Moreover, it is to be noted that following the Constitutional Court of Ukraine decision No. 4-r/2020 and under their Plenum Resolution No 7 of 29 May 2020<sup>10</sup> the Supreme Court on 4 June 2020 applied to the Constitutional Court of Ukraine with another constitutional submission. The latter contains a number of issues, among other things, regarding limitation of the level of financial security of officials, introduced by the Law of Ukraine No 553-IX<sup>11</sup> (on the amendments to the Budget Law for 2020) in the framework

---

<sup>8</sup> <https://hcj.gov.ua/doc/doc/3029>

<sup>9</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69228](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69228)

<sup>10</sup> [https://supreme.court.gov.ua/supreme/pro\\_sud/postanova\\_plenumu\\_46/](https://supreme.court.gov.ua/supreme/pro_sud/postanova_plenumu_46/)

<sup>11</sup> <https://zakon.rada.gov.ua/laws/show/553-ix?lang=en>

of implementation the quarantine measures regarding prevention COVID-19, *inter alia*, limitation of the remuneration to judges, as well as of the Constitutional Court, members of the HCJ and the HQCJ.

## *2) As to the guarantees of judges and the HCJ's practice*

The Government of Ukraine would like to recall that information regarding irremovability of judges of the Supreme Court, their selection and remunerations have already been provided in their previous communication of 17 January 2020<sup>12</sup>.

Taking into account the recent amendments to the legislation on the judiciary, it is important to note that paragraphs 22 and 23 of Section XII “Final and Transitional Provisions” of the Law of Ukraine “On Judiciary and Status of Judges” (which provides for different amounts of judges’ remunerations who have not passed the qualification evaluation and judges who have passed such evaluation or judges appointed for the post based on the results of the competition conducted after the Law of Ukraine “On Judiciary and Status of Judges” came into force) **are excluded**. In this regard, the judges’ remunerations are set according to uniform rules for all judges, regardless of their qualification evaluation.

The above Law No. 193-IX introduces changes to the disciplinary proceedings with the aim at speeding them up and making them more transparent, namely, the term of disciplinary proceedings shall not exceed sixty days from the date of receipt of the disciplinary complaint (new Article 42 (4) of the Law of Ukraine “On the HCJ”).

Therefore, in order to avoid delays (which may then lead to the time barring of disciplinary complaints) time limits for the preliminary stage of such proceedings were introduced, when a member of the HCJ is screening a disciplinary complaint.

However, it should be noted that Article 49 (13) of the above Law specifies that the Disciplinary Chamber shall conduct examination of a disciplinary case within ninety days from the date when the disciplinary case is opened. Under exceptional circumstances, this period may be extended by the Disciplinary Chamber, but not more than for thirty days if it is necessary to carry out an additional examination of the facts of the case and/or the case files.

The Government would like to underline that examples of the practice of review by the HCJ of disciplinary complaints against judges were provided in the Government of Ukraine previous Updated Action Plan on measures to be taken for implementation of the Court’s judgments in the group of cases *Oleksandr Volkov v. Ukraine* of 17 January 2020<sup>13</sup>.

However, the Government would like to provide updated examples of the HCJ’s practice of consideration of disciplinary complaints after the entry into force of the Law No. 193-IX.

<https://hcj.gov.ua/doc/doc/2496>. On 17 February 2020, the HCJ received a disciplinary complaint against the actions of a judge of the Kyivskiy District Court of Kharkiv when considering a civil case for the recognition of property rights. The Second Disciplinary Chamber of the HCJ heard the speaker - a member of the Second Disciplinary Chamber, examined his findings and case-file, took into account

---

<sup>12</sup> [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22DH-DD\(2020\)40-revE%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2020)40-revE%22]})

<sup>13</sup> [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22DH-DD\(2020\)40E%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2020)40E%22]})

the judge's written explanations, and on 13 April 2020 opened a disciplinary case against the judge. Therefore, only 45 calendar days have passed since the disciplinary complaint was received.

<https://hcj.gov.ua/doc/doc/2535>. On 28 February 2020, the HCJ received a disciplinary complaint against the actions of a judge of the Podilskyi District Court of Kyiv. As a result of a preliminary review of the above disciplinary complaint, on 16 April 2020 the First Disciplinary Chamber of the HCJ refused to open disciplinary proceedings. It is important to note that the HCJ complied with the time-limits for the preliminary stage set in the new Article 42.4 of the Law "On the HCJ".

<https://hcj.gov.ua/doc/doc/2558>. On 2 January 2020, the HCJ received a disciplinary complaint against the actions of a judge of Kherson City Court of Kherson Region during the divorce proceedings. On 5 February 2020, the HCJ opened a disciplinary case against the judge (therefore, 34 calendar days have passed since the disciplinary complaint was received). However, due to the heavy workload and the need for further review of the circumstances and case-file of the disciplinary case, on 22 April 2020 the Third Disciplinary Chamber of the HCJ extended the time review of disciplinary case for thirty days (under Article 49 of the Law "On the HCJ").

Therefore, the HCJ, in the consideration of disciplinary complaints, adheres to the time-limit for the preliminary stage of disciplinary proceedings established by the new Article 42.4 of the Law "On the HCJ", as well as the time-limit of consideration of the disciplinary complaint established by Article 49 of the above Law.

### Independence of judges

In their previous submissions to the Committee of Ministers, the Government of Ukraine have already provided information regarding guarantees of independence of judges.

At the same time, the Government would like to note that under paragraph 9 of part 7 of Article 56 of the Law of Ukraine "On the Judiciary and the Status of Judges" the judge is obliged, *inter alia*, to report the interference with his/her activities as a judge in administration of justice to the HCJ and to the Prosecutor General within five days after they became aware of such interference.

The HCJ takes measures to ensure the independence of judges (see Article 131 of the Constitution). Article 73 of the Law of Ukraine "On the HCJ" envisages, *among other things*, that:

1. In order to guarantee the independence of judges and the authority of justice, the HCJ, *among other things*:

1) on its official website holds and publishes the Register of statements of judges concerning the interference in the functioning of a judge regarding the administration of justice, checks such statements, publishes the findings and adopts the respective decisions;

2) files submissions to the respective authorities or officials on identifying and holding liable (as it is envisaged by the law) of persons who committed acts or a lack of action which are in breach of the guarantees of the judicial independence or which undermined the authority of justice;

[...]

- 5) appeals to the law-making bodies and the bodies authorised to adopt legal acts, with proposals regarding the independence of judges and authority of justice;
- 6) files requests to the prosecutor's office and the law enforcement agencies on providing information as to exposure and investigation of crimes committed against the court, judges, members of their families, employees of the court administrations, crimes against justice, committed by judges, employees of the court administration;
- 7) in cooperation with bodies of the judicial self-governance, other bodies and agencies of the justice system, non-governmental organisations prepares and publishes the annual report on the state of guaranteeing the independence of judges in Ukraine;
- 8) takes other measures necessary to guarantee independence of judges and the authority of justice.

The Government would like to note that on the HCJ's website it can be found a Register of judges' statements of interferences with the administration of justice<sup>14</sup>. In addition, the HCJ decisions on taking measures to ensure the independence of judges also can be found on the HCJ official website<sup>15</sup>.

It is important to note that the Annual Report "On Ensuring Independence of Judges in Ukraine in 2019" ("**Annual Report**") was approved by the HCJ's decision No. 933/0/15-20<sup>16</sup> of 9 April 2020. According to the information provided in the Annual Report, the Register of judges' statements of interferences with the administration of justice contains 1,220 judges' statements of interferences with the administration of justice, namely, in 2016 - 23 judges' statements were supplemented to the Register of judges' statements, in 2017 – 312 statements of judges, in 2018 – 436 and in 2019 – 450 statements of judges. It should be noted that during 2019, the HCJ considered 618 judges' statements of interferences with the administration of justice, namely, adopted 115 decisions on measures to ensure the independence of judges and the authority of justice; approved 417 conclusions on the lack of grounds for measures to ensure the independence of judges and the authority of justice.

Therefore, the HCJ is taking steps to ensure the independence of judges and, in addition, appealing to the HCJ with the statements of interferences with the administration of justice is an important indicator of the state of independence of judges.

### **3) Criminal responsibility of judges**

The Government of Ukraine would like to clarify, that judicial immunity – is an immunity from prosecution for acts performed in the exercise of a judgeship, with the exception of intentional crimes (i.e. functional immunity) – forms an integral part of the wider concept of judicial independence (see Venice Commission, Report on the independence of the judicial system Part I: the independence of judges (CDL-AD(2010)004), paragraph 61). As there are no strict European standards on judicial immunity, States enjoy a large margin of appreciation in organising the judiciary, including setting up systems to ensure the professional and ethical conduct of judges.

---

<sup>14</sup> <https://hcj.gov.ua/intervention>

<sup>15</sup> <https://hcj.gov.ua/acts>

<sup>16</sup> [https://hcj.gov.ua/sites/default/files/field/file/shchorichna\\_dopovid\\_za\\_2019\\_rik.pdf](https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2019_rik.pdf)

Moreover, it should be noted that, although European standards allow for judges to be held criminally liable while exercising their judicial functions, the threshold is high. Article 66 of Recommendation CM/Rec(2010/12) declares: “The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”. The high threshold for criminal liability is reiterated in the explanatory memorandum to Recommendation CM/Rec(2010/12): “When exercising judicial functions, judges should be held criminally liable only if the fault committed was clearly intentional”(see Recommendation CM/Rec(2010)12 and explanatory memorandum, paragraph 67).

In this regard, the Government would like to note that Article 375(“*Delivery of a knowingly unfair judicial decision*”) of the Criminal Code of Ukraine (**the “CCU”**) envisaged the criminal liability for delivery of invariable unfair judicial decision. It should be noted that quashing or changing of a court decision by a higher court cannot be a ground for criminal prosecution under Article 375 of the above Code. Furthermore, a judge cannot be held liable to a criminal sanction for a bona fide mistake, since the *mens rea* of the above crime is characterised only by a direct intent. Therefore, the criminal liability of a judge and the outcome of an appeals process are two separate issues, which should not be mixed. In any case, judges can only be held criminally liable for their decisions if individual guilt is proven.

As stated in the Annual Report, the HCJ adheres to the legal position that the entry by the investigator, prosecutor in the Unified Register of Pre-trial Investigations of information about delivery of invariable unfair judicial decision or committing another crime during the administration of justice is justified in the case of identification of criminal offence, which will be sufficient to further notify the judge of the suspicion and forward the bill of indictment to the court in a short term.

In addition, the HCJ noted that the entry into the Unified Register of Pre-trial Investigations of the information on criminal offence and the conduct of pre-trial investigation cannot indicate that there was an interference with the administration of justice and is not an absolute basis for taking the measures to ensure the independence of judge provided for by Article 73 of the Law “On the HCJ”. At the same time, if the HCJ found signs of interference with the administration of justice by law enforcement agencies, the HCJ appeals to the Prosecutor General’s Office of Ukraine to obtain information on the status of the investigation of crime, provided for in Article 375 of the CCU, in the relevant criminal proceedings. As a result of consideration of the appeals of the HCJ, the Prosecutor General’s Office and regional law enforcement agencies provide information on the current state of pre-trial investigation in criminal proceedings on the grounds of crime, provided by Article 375 of the CCU (see, *among other things*, Section 4.2 of the Annual Report).

It is important to note that the Prosecutor General’s Office of Ukraine issued Order “On Certain Issues of Organising the Work of Prosecution Bodies to Comply with the Legislation on Guaranteeing the Integrity and Independence of Judges” No. 126<sup>17</sup> of 15 July 2019. Its aim at organising the work of the prosecutor’s office in order to properly consider the judges’ statements of interferences with the administration of justice, to ensure compliance with the requirements of the law on guarantees of the integrity and independence of judges, to prevent cases of undue pressure on the judicial authorities, and to establish effective cooperation with the HCJ on these issues.

Among other things, it is important to note that a person can apply to law enforcement agencies with a statement of criminal offence under Article 375 of the CCU. The exercise of such a right by persons, in

---

<sup>17</sup> [https://www.gp.gov.ua/ua/iord?\\_m=publications&\\_t=rec&id=242880](https://www.gp.gov.ua/ua/iord?_m=publications&_t=rec&id=242880)



the absence of signs of abuse of rights, cannot be regarded as an interference with the activity of a judge in the administration of justice. At the same time, it is important to note that a deliberately false report of a crime is also a crime under Article 383 of the CCU.

According to the statistics provided in the Annual Report, in 2019, 408 criminal proceedings were initiated on the fact of delivery of invariable unfair judicial decision, among them 190 were closed and 2 bills of indictments were sent to court. At the same time, 168 cases were registered under Article 376 of the CCU (interference in the activities of judicial bodies), of which 121 were closed.

In addition, according to the information provided by the Criminal Cassation Court within the Supreme Court, in 2019, 30 criminal proceedings against 32 judges under Article 375 of the CCU were pending in local courts and during this period local courts examined 3 criminal proceedings, among them in 1 case the court passed a sentence and 2 cases were returned to the prosecutor.

Please be advised with some examples of the judicial practice which describe whilst a small number but verdicts of acquittal, only 3 according to the Unified State Register of Court Decisions, in cases where the court did not find violation under Article 375 of the CCU (*“Delivery of a knowingly unfair judicial decision”*) due to lack of knowledge.

The domestic court considered a criminal case against a judge accused of committing crimes under Article 375 of the CCU and on 15 January 2020 found the judge not guilty of committing crimes under Article 375 of the CCU (see at link: <http://www.reyestr.court.gov.ua/Review/86915866>).

As to the circumstances of the case: on 27 June 2014 the claimant lodged with the Pechersk District Court of Kyiv a claim against the respondent about the transfer of the rights and obligations of the buyer and recognition of the property right. The judge opened the civil proceedings and returned the claim due to the procedural defects to the claimant. But, on 14 July 2014 the claimant lodged with the court a modified claim. The prosecution considered that on 14 July 2014 the judge acted deliberately, in the interests of the claimant, was opened the civil proceedings in this case and was conducted the court hearing without a legal basis and in the absence of the defendant in the case. Subsequently, the claimant's claim was allowed. In its decision domestic court found that the investigator of the prosecutor's office had no grounds or authority to conduct a civil case review, as no information had been entered in the Unified State Register of Pre-Trial Investigations into a Criminal Offence.

The court noted that the information contained in the above record of the civil case review indicated exclusively the existence of a civil case; the issuance of procedural decisions, and in no way indicated the commission of the crime charged by the judge. In addition, the allegation of the prosecution concerning the damage caused by the judge to the injured party does not correspond to the provisions of the Civil Code of Ukraine, and is completely refuted by the data stated in the conclusions of the construction, technical and economic forensic.

In general, the domestic court considered the case, examined the written evidence, heard the witnesses and took into account the Supreme Court's legal opinion on application of Article 375 of the CCU and reached the following conclusions:

- the civil case was considered by an “independent and impartial court” within the meaning of Article 6 of the Convention;

- neither the case-file of the criminal proceedings, nor the testimony provided by the injured party, was not proven a willful gross violation of the requirements of the Code of Civil Procedure of Ukraine by a judge during the hearing of the above civil case;
- the prosecution has not provided evidence that the judge deliberately acted in favor of claimant in reaching decision in a civil case;
- the cause of a judge to declare an “unfair judicial decision” in a civil case was not determined.

Other court decisions found judges not guilty of committing crime under Article 375 of the CCU can be found in the electronic Unified State Register of Court Decisions, containing all the domestic courts’ decisions of Ukraine, namely at the links: <http://www.reyestr.court.gov.ua/Review/73745330> and <http://www.reyestr.court.gov.ua/Review/67024918>.

The Government would like to note that on 11 June 2020 the Constitutional Court of Ukraine under the constitutional submission of 55 people’s deputies regarding the constitutionality of Article 375 of the CCU of 5 April 2001, No. 2341-III, delivered a decision<sup>18</sup> No 7-r/2020 and declared this article unconstitutional (see the full text of the Decision in *Annex III*).

The Constitutional Court of Ukraine proceeds, in particular, from the fact that Article 375 of the CCU does not establish criteria according to which it is possible to determine which sentence, decision, ruling or resolution of a judge (judges) is “unjustified”, nor does it disclose the meaning of “unfair”, which can lead to an ambiguous understanding of the composition of the crime, the qualification of which is carried out under this rule.

The above Decision emphasises that the criminal law (Article 375 of the Code) must meet the requirements of legal certainty, clarity, unambiguity and predictability. This is a guarantee that a judge will administer justice under the rule of law and the effective exercise by everyone of the constitutional right to judicial protection.

Establishing criminal responsibility for a “knowingly unfair” court decision creates risks and opportunities to influence on judges.

The Constitutional Court of Ukraine considered it expedient to postpone the expiration of the above article for six months from the date of the Constitutional Court’s decision on its unconstitutionality, in connection with which the Parliament of Ukraine shall bring the normative regulation established by the Article 375 of the CCU into compliance with the Constitution of Ukraine and this Decision.

The decision of the Constitutional Court of Ukraine is binding, final and cannot be appealed.

#### ***4) As regards cooperation activities with the Council of Europe***

The Government of Ukraine highly appreciate the contribution of the Council of Europe institutions in the development of an effective system of justice in Ukraine. The Government take into account and adhere to all Recommendations of the Committee of Ministers.

---

<sup>18</sup> <http://www.ccu.gov.ua/docs/3127>

The launching of the Council of Europe project “Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Court on Human Rights” (“**the Project**”), which is funded by the Human Rights trust Fund and implemented by the Justice and Legal Co-operation Department of the Council of Europe, was held in Kyiv on 4 February 2020.

The overall objective of the Project is to support Ukraine in providing accessible, full and effective justice through the execution of judgments of the European Court of Human Rights in which violations of Article 6 of the European Convention on Human Rights are established.

The launch event of the Project brought together over 70 project partners and guests including, inter alia, judges and representatives of the Constitutional Court of Ukraine, the Supreme Court, the Agent before the European Court of Human Rights and other representatives of the Ministry of Justice of Ukraine, the head and representatives of the HCJ, the Council of Judges of Ukraine, the National School of Judges of Ukraine, as well as representatives of civil society and international organisations, academia, as well as representatives and experts of the Council of Europe.

During the meeting, a representative of the Supreme Court thanked the Office of the Council of Europe in Ukraine for its fruitful cooperation. He stressed that the courts of Ukraine in their practice are increasingly applying the legal positions of the European Court. And the Supreme Court, if it finds that national legislation does not comply with European standards, directly applies the provisions of the Convention and the European Court’s case law.

The rapporteur noted that the competence of the Grand Chamber included, in particular, the review of court decisions in connection with exceptional circumstances, if the European Court found that Ukraine had violated its international obligations in resolving the case by the domestic court. He also informed that during the last year the Supreme Court considered 98 relevant applications, the decisions were rendered under 23 applications, 12 of which were satisfied.

The Chairman of the HCJ noted that the right to a fair trial is one of the fundamental rights of citizens, as it affects all components of the justice system and defines the key human rights that fall within the field of view of the justice system.

Among them are the right to independence and impartiality of a court established and operating in accordance with the law, the validity of the accusation, the right of a person to a public hearing and restriction of publicity if necessary to protect the interests of justice, the right to protection in general.

He also stressed the fruitful cooperation with the Council of Europe projects, especially in the preparation of the Annual Report on the state of independence of judges in Ukraine. It is a basic document, which in fact is a roadmap for the HCJ in order to implement of the Council of Europe standards and recommendations of expert institutions on a fair trial.

On 24 June 2020, with the support of the Project Further together with the HCJ it was held a professional discussion (via video) of the HCJ’s Annual Report “On Ensuring Independence of Judges in Ukraine in 2019”. The participants of the meeting (judges of the Constitutional Court of Ukraine, the Supreme Court, the courts of first and appellate instances, members and representatives of the HCJ, the Council of Judges of Ukraine, the National Schools of Judges of Ukraine, the State Judicial Administration of Ukraine, representatives of the Parliament of Ukraine, the Ministry of Justice of Ukraine, law enforcement agencies, civil society and international organisations, representatives and experts of the



Council of Europe) discussed the role and practice of the HCJ in ensuring independence of the judiciary in Ukraine; exchanged views on strengthening the independence and impartiality of the judiciary in Ukraine in the context of the Council of Europe standards and recommendations, as well as implementation of the Court's judgments in the group of cases "*Oleksandr Volkov v. Ukraine*".

## CONCLUSIONS OF THE RESPONDENT STATE

The Ukrainian authorities would like to express their gratitude for the on-going support given by the Council of Europe to the judicial reform. The Ukrainian Government intend to follow meticulously the guidance given in the judgments of the European Court, the Court's case-law as well as the previous decisions and guidance given by the Committee of Ministers in order to establish the necessary long-lasting solution for the problems.

The Government of Ukraine would like to emphasis on its commitment to the European values, principles and standards of the protection of human rights when executing the European Court's judgments. They will inform the Committee about further developments in this group of cases.

## ANNEX I

### *Kulykov and Others v. Ukraine*

#### Reviewing proceedings in the applicants' cases before the High Council of Justice

<i>N o.</i>	<i>Case title and application number</i>	<i>The results of the re-examination of the applicants' cases before the HCJ</i>
<b>1</b>	Andriy Volodymyrovych <b>KULYKOV</b> (no. 5114/09)	According to the HCJ, the applicant's case-file was not submitted for re-examination. In addition, the applicant's case is still pending before the Grand Chamber within the Supreme Court.
<b>2</b>	Volodymyr Mykolayovych <b>KORZACHENKO</b> (no. 4588/11)	As of 13 November 2019, the applicant was not reinstated on the post of judge of the district court and was not assigned to the staff list of this court. For today, the case is still pending before the HCJ.
<b>3</b>	Oleg Volodymyrovych <b>BACHUN</b> (no. 9740/11)	As of 13 November 2019 the applicant was not reinstated as a judge of the court and was not put on the payroll of this court. The case-files were transmitted to the HCJ for re-examination in order to tackle an issue as to existence of grounds for disciplinary liability. The case is still pending before the HCJ.
<b>4</b>	Sergiy Mykhaylovych <b>KONYAKIN</b> (no. 12812/11)	As of 13 November 2019 the applicant was not reinstated on the post of judge of the district court and was not assigned to the staff list of this court due to absence of the vacancy in this court. For today, the case is still pending before the HCJ.

5	Lyudmyla Ivanivna <b>STASOVSKA</b> (no. 20554/11)	As of 16 March 2020 <u>the applicant was reinstated on the post of judge</u> in accordance with the Order of the president of court of 4 March 2020. The case is still pending before the HCJ.
6	Kyrylo Oleksandrovych <b>KORMUSHYN</b> (no. 68443/11)	As of 13 November 2019 the applicant was not reinstated on the post of judge of the district court and was not assigned to the staff list of this court after the Parliament of Ukraine resolution was quashed. As to the HCJ decision of 23 April 2020 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.
7	Liliya Anatoliyivna <b>VASINA</b> (no. 75790/11)	As of 14 November 2019 <u>the applicant was reinstated on the post of judge</u> in accordance with the Order of the acting president of court of 31 July 2018. The applicant began to perform her professional duties on the post of judge in the district court from 1 August 2018. The case is still pending before the HCJ.
8	Igor Ivanovych <b>BARANENKO</b> (no. 78241/11)	By Kyiv Administrative Court of Appeal Order of 20 May 2019 the applicant's dismissal from the staff list of this appeal court was quashed under Order of 30 May 2011. The HCJ decision of 16 April 2019 refused the applicant's dismissal from the post of judge in Kyiv Administrative Court of Appeal ( <a href="http://www.vru.gov.ua/act/18114">http://www.vru.gov.ua/act/18114</a> ). As of 14 November 2019 <u>the applicant was reinstated on the post of judge</u> in accordance with the Order of Kyiv Administrative Court of Appeal of 20 May 2019. In addition, under the HCJ's decision of 5 March 2020 the applicant was resigned from the court.
9	Igor Anatoliyovych <b>BONDARENKO</b> (no. 5678/12)	As to the Supreme Court decision of 19 February 2018 and the president of the court Order, the applicant began to perform his professional duties on the post of judge in the district court from 4 May 2018. As of 14 November 2019, <u>the applicant was reinstated on the post of judge</u> . For today, the case is still pending before the HCJ.
10	Nina Dmytrivna <b>BABYCH</b> (no. 11775/12)	The Order of the president of court of 11 December 2018 "On the reinstatement of Babych N.D." provides for as follows: (1) to quash the order "On deduction of Babych N.D."; (2) to consider Babych N.D. as commenced the duties of a judge of a district court on 12 December 2018. As of 14 November 2019, <u>the applicant was reinstated on the post of judge</u> . The case is still pending before the HCJ.
11	Oleksandr Mykolayovych <b>ROZDOBUDKO</b> (no. 21546/12)	As of 14 November 2019, the applicant was not reinstated as a judge of the court and was not assigned to the staff list of this court due to absence of the vacancy in this court. The case is still pending before the HCJ.
12	Lidiya Volodymyrivna <b>TOKAR</b> (no. 54135/12)	As of 13 November 2019, the applicant was not reinstated on the post of judge. The applicant's case is still pending before the HCJ.
13	Oleksandr Anatoliyovych <b>SHKINDER</b> (no. 65207/12)	As to the HCJ decision of 17 January 2019, the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine ( <a href="http://www.vru.gov.ua/act/17086">http://www.vru.gov.ua/act/17086</a> ). On the same date the applicant appealed against the HCJ decision to the Supreme Court. On 18 December 2019, the CAC allowed the applicant's claim and quashed the HCJ's decision of 17 January 2019. Under the HCJ's appeal, on 27 January 2020 the Grand Chamber within the Supreme Court opened the appeal proceedings. As of 13 November 2019, the applicant was not reinstated as a judge of the court.
14	Aleksandr Ivanovich <b>VOLVENKO</b> (no. 77810/12)	As of 13 November 2019, the applicant was not reinstated as a judge of the court. As of today, the case is still pending before the HCJ.

<b>15</b>	Yuriy Oleksiyovych <b>STREBKOV</b> (no. 242/13)	As of 13 November 2019, the applicant was not reinstated as a judge of the court. As of today, the case is still pending before the HCJ.
<b>16</b>	Gennadiy Leonidovych <b>NEMYNUSHCHIY</b> (no.15073/13)	By order of the presiding judge, the applicant commenced the duties of a judge of the town-district court since 13 September 2018. As of 15 November 2019, the applicant was expelled from the court under the Order of the president of court of 1 April 2019. As to the HCJ decision of 14 March 2019, the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine ( <a href="http://www.vru.gov.ua/act/17712">http://www.vru.gov.ua/act/17712</a> ). The applicant appealed against this HCJ's decisions to the Supreme Court. On 28 November 2019, the CAC partly allowed the applicant's claim and quashed the HCJ's decision of 14 March 2019. Under the HCJ's appeal, on 20 January 2020 the Grand Chamber within the Supreme Court opened the appeal proceedings.
<b>17</b>	Nataliya Grygorivna <b>SEREDNYA</b> (no. 57154/13)	As of today, the case is still pending before the HCJ. As of 14 November 2019, <u>the applicant was reinstated on the post of judge.</u> The applicant began to perform her professional duties on the post of judge in the district court from 18 September 2019. The HCJ decision of 14 January 2020 refused the applicant's dismissal from the post of judge in district court.
<b>18</b>	Petro Olegovych <b>KOVZEL</b> (no.35336/11)	By Order of the presiding judge of Kyiv Circuit Administrative Court of 19 March 2014, the applicant was reinstated on the post of judge since 3 March 2014. Further, the presiding judge under Order of 20 December 2017 reinstated the applicant on the post of judge from 7 August 2010. As of 14 November 2019, <u>the applicant was reinstated on the post of judge.</u>

## ANNEX II

### *As regards dismissal of judges by the Parliament on 29 September 2016*

According to the information already submitted by the Government of Ukraine and the results of the dismissal proceedings in the judges' cases, domestic courts rendered the final court decisions in 23 cases. In one more case (Mr Valerii Anatoliiovych Shvets) the applicant did not file a claim to the Supreme Court against the Parliament seeking the recognition unlawful and quashing the Parliament's resolution of 29 September 2016 on the applicant's dismissal from the post of judge for "breach of oath".

Under the results of *Koval* and *Tataurova* cases, the Grand Chamber within the Supreme Court rendered decisions that became final. However, the dismissal proceedings in other 6 cases are still pending before the domestic court, as follows.

<i>No.</i>	<i>Name of a judge</i>	<i>Status of the proceedings</i>
------------	------------------------	----------------------------------

1.	Yefimova Olha Ivanivna	<p>On 12 September 2019 the CAC allowed the applicant's claim, declared illegal and quashed the decision of the HCJ about submission to the Parliament of Ukraine concerning dismissal of the applicant from the post of judge for "breach of oath".</p> <p>As to the HCJ's appeal, on 23 October 2019 the Grand Chamber within the Supreme Court opened the appeal proceedings. The Grand Chamber within the Supreme Court scheduled the case for 11 June 2020.</p> <p><u>The applicant's case is still pending before the Grand Chamber within the Supreme Court.</u></p> <p>In addition, the case under the applicant's claim against the Parliament seeking the recognition unlawful and quashing resolution of the Parliament of 29 September 2016 <u>is still pending before domestic courts.</u></p>
2.	Poida Serhii Mykolaiovych	<p>On 27 February 2017 the Higher Administrative Court of Ukraine suspended the administrative proceedings under the applicant's claim against the Parliament seeking the recognition unlawful and quashing resolution of the Parliament of 29 September 2016 on the dismissal of the applicant from the post of judge for "breach of oath". <u>The applicant's case is still pending before the CAC.</u></p> <p>In addition, on 19 February 2019 the CAC partly allowed the applicant's claim against the HCJ seeking the recognition unlawful and quashing the decision of the HCJ about submissions to the Parliament of Ukraine on dismissal of the applicant from the post of judge for "breach of oath", quashed the decision of the Higher Administrative Court of Ukraine of 13 July 2017 and transmitted the case for fresh consideration. <u>The applicant's case is still pending before domestic court.</u></p>
3.	Demydovska Alla Ihorivna	<p>On 8 February 2018 the CAC suspended the administrative proceedings under the applicant's claim against the Parliament seeking the recognition unlawful and quashing the Parliament's resolution of 29 September 2016 on dismissal of the applicant from the post of judge for "breach of oath". <u>The applicant's case is still pending before the CAC.</u></p> <p>In addition, under the applicant's claim against the HCJ, on 30 March 2017 the Higher Administrative Court of Ukraine allowed the applicant's claim, declared illegal and quashed the decision of the HCJ about submission to the Parliament of Ukraine concerning dismissal of the applicant from the post of judge for "breach of oath". <u>The applicant's case is still pending before the CAC.</u></p>
4.	Tataurova Iryna Mykolaivna	<p>On 10 January 2018 the CAC opened the administrative proceedings under the applicant's claim against the Parliament seeking the recognition unlawful and quashing the Parliament's resolution of 29 September 2016 on dismissal of the applicant from the post of judge for "breach of oath". The CAC scheduled the case for 13 July 2020.</p> <p><u>The applicant's case is still pending before the CAC.</u></p> <p>In addition, on 1 April 2020 the CAC rejected the HCJ's appeal against decision of the Higher Administrative Court of Ukraine of 13 September 2017 in the case under the applicant's claim against the HCJ seeking the recognition unlawful and quashing the decision of the HCJ about submissions to the Parliament of Ukraine on dismissal of the applicant from the post of judge for "breach of oath". <u>The CAC's decision became final.</u></p>
5.	Stepanenko Viktor Viktorovich	<p>On 19 February 2018 the CAC partly allowed the applicant's claim, declared illegal and quashed resolution of the Parliament of 29 September 2016 on dismissal of the applicant from the post of judge for "breach of oath". The appeal can be lodged with the Grand Chamber within the Supreme Court. <u>As of today the applicant did not avail himself of such a possibility.</u></p> <p>In addition, on 22 October 2019 the CAC opened the administrative proceedings in the case under the applicant's claim against the HCJ</p>

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

		seeking the recognition unlawful and quashing the decision of the HCJ about submissions to the Parliament of Ukraine on dismissal of the applicant from the post of judge for “breach of oath”. <u>The applicant’s case is still pending before the CAC.</u>
--	--	--

In addition, in the table below the Government of Ukraine would like to provide information regarding the re-examination before the HCJ of the dismissed judges in transitional period prior to amended Constitution of Ukraine, in particular:

<i>No.</i>	<i>Name of a judge</i>	<i>The results of the re-examination of the applicants’ cases before the HCJ</i>	<i>As to the appealing against the HCJ’s decision to domestic court</i>
1.	<b>Bartashchuk</b> Liudmyla Viktorivna	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination.	
2.	<b>Bets</b> Oleksandr Vadymovych	The case is still pending before the HCJ.	
3.	<b>Volkova</b> Svitlana Yakivna	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination. By order of the Pecherskyy District Court of Kyiv of 11 November 2019 <u>the applicant was reinstated on the post of a judge.</u>	
4.	<b>Hamanko</b> Oleksandr Ivanovych	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination.	
5.	<b>Demydovska</b> Alla Ihorivna	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination. In addition, the applicant’s claims against the Parliament’s resolution on the dismissal of the applicant from the post of judge for “breach of oath” and the HCJ’s submission are still pending before domestic courts.	
6.	<b>Domaratska</b> Alla Viktorivna	As to the HCJ’s decision of 16 August 2018 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ’s decision of 16 August 2018 to domestic court. On 9 August 2019 the CAC rejected the applicant’s claim. On 12 March 2020, the Grand Chamber within the Supreme Court rejected the applicant’s appeal and upheld the above decision of 9 August 2019.
7.	<b>Yefimova</b> Olha Ivanivna	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination. In addition, the applicant’s claims against the Parliament’s resolution on the dismissal of the applicant from the post of judge for “breach of oath” and the HCJ’s submission are still pending before domestic courts.	
8.	<b>Koval</b> Svitlana Mykolaivna	According to the HCJ, the applicant’s case-file was not transmitted to the HCJ for re-examination.	

9.	<b>Levchenko</b> Anatolii Volodymyrovych	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
10.	<b>Lysenko</b> Volodymyr Vasylyovych	The case is still pending before the HCJ.	
11.	<b>Makukha</b> Andrii Anatoliiovych	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
12.	<b>Martsynkevych</b> Vitalii Anatoliiovych	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
13.	<b>Merkulova</b> Tetiana Volodymyrivna	As to the HCJ's decision of 11 July 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 11 July 2019 to the CAC. On 15 October 2019, the CAC returned the applicant's claim to the applicant.
14.	<b>Myroshnychenko</b> Stanislav Volodymyrovych	As to the HCJ's decision of 27 June 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 27 June 2019 to the CAC. On 23 January 2020 the CAC allowed the applicant's claim. Under the HCJ's appeal, on 24 February 2020 the Grand Chamber within the Supreme Court opened the appeal proceedings. The applicant's case is still pending before the Grand Chamber within the Supreme Court.
15.	<b>Poida</b> Serhii Mykolaiovych	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination. In addition, the applicant's claims against the Parliament's resolution on the dismissal of the applicant from the post of judge for "breach of oath" and the HCJ's submission are still pending before domestic courts.	
16.	<b>Pryndyuk</b> Mariia Vasylivna	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
17.	<b>Proshuta</b> Iryna Dmytrivna	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
18.	<b>Reva</b> Serhii Viktorovych	As to the HCJ's decision of 5 February 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 5 February 2019 to the CAC. On 30 January 2020 the CAC allowed the applicant's claim. Under the HCJ's and the applicant's appeals, the Grand Chamber within the Supreme Court opened the appeal proceedings. The applicant's case is still pending before the Grand

			Chamber within the Supreme Court.
19.	<b>Riepina</b> Lidiia Oleksandrivna	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
20.	<b>Siromashenko</b> Nataliia Volodymyrivna	The case is still pending before the HCJ.	
21.	<b>Stepanenko</b> Viktor Viktorovych	As to the HCJ's decision of 3 September 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 3 September 2019 to the CAC.
22.	<b>Tataurova</b> Iryna Mykolaivna	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination. In addition, the applicant's claim against the Parliament seeking the recognition unlawful and quashing the Parliament's resolution of 29 September 2016 on dismissal of the applicant from the post of judge for "breach of oath" is still pending before the CAC.	
23.	<b>Tatkov</b> Viktor Ivanovych	As to the HCJ's decision of 3 September 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 3 September 2019 to the CAC. On 14 November 2019 the CAC rejected the applicant's claim and upheld the HCJ's decision of 3 September 2019. On 18 December 2019 the Grand Chamber within the Supreme Court opened the appeal proceedings. The applicant's case is still pending before the Grand Chamber within the Supreme Court.
24.	<b>Khomenko</b> Valentyna Hryhorivna	As to the HCJ's decision of 18 July 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	
25.	<b>Tsybra</b> Nelia Valentynivna	As to the HCJ's decision of 28 November 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 28 November 2019 to the CAC.
26.	<b>Chala</b> Alla Petrivna	As to the HCJ's decision of 9 July 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 9 July 2019 to the CAC.
27.	<b>Chornobuk</b> Valerii Ivanovych	As to the HCJ's decision of 19 September 2019 the applicant was dismissed from the post of judge in accordance with para. 3 of Article 126.6 of the Constitution of Ukraine.	The applicant appealed against the HCJ's decision of 19 September 2019 to the CAC.
28.	<b>Shvets</b> Valerii Anatoliiovych	According to the HCJ, the applicant's case-file was not transmitted to the HCJ for re-examination.	
29.	<b>Kalinichenko</b> Olena Borysivna	The case is still pending before the HCJ.	

***ANNEX III***

**Unofficial translation**

**In the name of Ukraine**  
**Decision**  
**of the Constitutional Court of Ukraine**



**in the case upon the constitutional petition of 55 People's Deputies of Ukraine on the conformity of Article 375 of the Criminal Code of Ukraine to the Constitution of Ukraine (constitutionality)**

Kyiv

June 11, 2020

No. 7-r/2020

Case No. 1-305/2019(7162/19)

The Grand Chamber of the Constitutional Court of Ukraine composed of the judges:

Oleksandr Tupytskyi - Chair,

Serhiy Holovaty,

Viktor Horodovenko,

Iryna Zavhorodnia,

Oleksandr Kasminin,

Viktor Kolisnyk,

Viktor Kryvenko,

Vasyl Lemak,

Oleksandr Lytvynov,

Volodymyr Moisyk,

Oleh Pervomayskyi,

Serhii Sas,

Petro Philiuk,

Halyna Yurovska - Judge-rapporteur,

considered at the plenary session the case upon the constitutional petition of 55 People's Deputies of Ukraine on the conformity of Article 375 of the Criminal Code of Ukraine to the Constitution of Ukraine (constitutionality).

Having heard the judge-rapporteur Halyna Yurovska and having examined the case files, the Constitutional Court of Ukraine

**f o u n d:**

1. The subject of the right to constitutional petition - 55 People's Deputies of Ukraine - appealed to the Constitutional Court of Ukraine to declare unconstitutional Article 375 of the Criminal Code of Ukraine (hereinafter - the Code), according to which:

"Article 375. Delivery by a judge (judges) of a knowingly unjust sentence, decision, ruling or resolution

1. Delivery by a judge (judges) of a knowingly unjust sentence, decision, ruling or resolution shall be punishable by restriction of liberty for a term of up to five years or imprisonment for a term of two to five years.

2. The same actions that caused grave consequences or have been committed for mercenary motives, with other personal interests or in order to prevent lawful professional activity of a journalist shall be punishable by imprisonment for a term of five to eight years".

The petitioners consider that the combination of the words "knowingly unjust" is evaluative, its content is not defined by law, which does not ensure the predictability of the application of Article 375 of the Code. According to the People's Deputies of Ukraine, Article 375 of the Code contradicts the principle of the rule of law, namely its elements such as legal certainty and legitimate expectations, which violates the requirements of Articles 8.1, 24.1 of the Constitution of Ukraine, as well as affects the independence and inviolability of judges, which contradicts Article 126.2 of the Basic Law of Ukraine.

2. In resolving the issue raised in the constitutional petition, the Constitutional Court of Ukraine proceeds from the following.

2.1. The Constitution of Ukraine stipulates that the principle of the rule of law is recognised and effective in Ukraine (Article 8.1); state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial (Article 6.1).

In its Decision of July 8, 2016 № 5-rp/2016, the Constitutional Court of Ukraine noted that "the purpose of the functional division of state power into legislative, executive and judicial is, in particular, the division of powers between different state authorities, which means autonomous execution of their functions by each of them and exercise of powers in accordance with the Constitution and laws of Ukraine" (paragraph two of item 2.2 of the motivation part).

According to the Basic Law of Ukraine, the bodies of legislative, executive and judicial power exercise their powers within the limits established by the Constitution of Ukraine and in accordance with the laws of Ukraine (Article 6.2); public authorities bodies and bodies of local self-government, their officials are obliged to act only on the basis within their powers and in the manner prescribed by the Constitution and laws of Ukraine (Article 19.2); human and civil rights and freedoms are protected by the court (Article 55.1); justice in Ukraine is administered exclusively by courts; delegation of functions of courts, as well as appropriation of these functions by other bodies or officials are not allowed (Articles 124.1 and 124.2); a judge may not be held liable for a court decision rendered by him/her, except for the commission of a crime or a disciplinary misdemeanor (Article 126.4).

The systemic analysis of the provisions of Articles 6, 8, 19, 55.1, 124, 126 of the Constitution of Ukraine gives grounds to consider that public relations in the field of justice are under the constitutional protection in order to prevent actions contrary to the purpose of justice and to prevent the issuance of a court decision, which in essence cannot constitute an act of justice.

2.2. Article 375 of the Code establishes criminal liability for delivery of by a judge (judges) of a “knowingly unjust” sentence, decision, ruling or resolution.

The analysis of this article of the Code gives grounds to claim that the combination of the words “knowingly unjust” is borrowed from Article 176 of the Criminal Code of the Ukrainian SSR of 1960 (later - the Criminal Code of Ukraine), which established liability for the delivery by judges, on mercenary motives or for reasons of other personal interest, of a “knowingly unjust” sentence, decision, ruling or resolution .

The analysis of Article 375 of the Code in the historical context gives grounds to consider it an unsuccessful imitation of the legal practice of the Soviet state. The Soviet legal and political system made it possible to use such a rule to control and to influence judges.

In Ukraine, as a democratic state, the main requirement for legislation is its compliance with the criteria and principles established in the Constitution of Ukraine, in particular the principle of the rule of law.

The borrowings inherent in the Soviet state and its constitution reflect a system of principles and values that contradict the Constitution of Ukraine, its principles, in particular the rule of law.

2.3. The requirement of the rule of law is the observance of the principle of legal certainty, which provides for uniform application of a legal norm, to prevent instances of its arbitrary interpretation.

Legal certainty of a legal norm is a key condition for ensuring effective judicial protection for everyone by an independent court.

In the Decision of June 20, 2019 № 6-r/2019, the Constitutional Court of Ukraine emphasised that "legal certainty must be understood through its following components: certainty, clarity, consistency of legal norms"; "the legislator must strive for clarity and certainty in the wording of legal norms. Each person, according to the specific circumstances, should be aware of the legal rule to be applied in a particular case, and have a clear understanding of the occurrence of specific legal consequences in the relevant legal relationship given the reasonable and foreseeable stability of legal norms" (paragraphs five and six of item 4.1 of the motivation part).

In its Decision of February 26, 2019 №1-r/2019, the Constitutional Court of Ukraine stressed that "compliance with the requirement of clarity and non-ambiguity of the rules establishing criminal liability is especially important given the specifics of criminal law and the consequences of bringing to criminal prosecution, as bringing to this type of legal liability is associated with possible essential restrictions of human rights and freedoms" (paragraph 3.7 of the motivation part).

In its judgment in the case "Novik v. Ukraine" of 18 December 2008 (application no. 48068/06), the European Court of Human Rights indicated: "it should be recalled that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. The requirement of "quality of law" in relation to Article 5 paragraph 1 [of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950] implies that where a national law authorizes a deprivation of liberty it must be sufficiently assessable, precise and foreseeable in application, in order to avoid all risk of arbitrariness" (§ 19).

The Constitutional Court of Ukraine proceeds from the fact that Article 375 of the Code does not establish criteria by which it is possible to determine which sentence, decision, ruling or resolution of a judge (judges) is "unjust", nor does it disclose the meaning of the word combination "knowingly unjust", which allows for inconsistent understanding of the of the elements of the crime, which is classified under this rule.

The wording of the disposition of Article 375 of the Code allows for a possibility of its abuse in the conduct of actions by pre-trial investigation bodies resulting in criminal prosecution of a judge only for the fact of issuance of a judicial decision, which, according to the subjective understanding of the investigator, prosecutor or any other person is "unjust" (in particular, in case of disagreement with such decision).

The criminal law (Article 375 of the Code) shall meet the requirements of legal certainty, clarity, consistency and foreseeability. It constitutes a guarantee that a judge will administer justice on the

foundations of rule of law and the effective exercise by everyone of the constitutional right to judicial protection.

In view of the above, the Constitutional Court of Ukraine concluded that Article 375 of the Code contradicts Article 8 paragraph 1 of the Constitution of Ukraine.

2.4. According to Article 126 of paragraph 4 of the Basic Law of Ukraine, a judge may not be held liable for a court decision adopted by him [or her], with exception for commission of a crime or disciplinary offence .

The European Commission for Democracy through Law (Venice Commission) in its Report on the Independence of the Judiciary, adopted at its 82<sup>nd</sup> plenary session on 12-13 March 2010, set the limits on the "functional immunity of judges" as immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, notably taking bribes (paragraph 61).

Thus, a judge can be brought to criminal liability only if the offense has been committed intentionally, there is an arbitrary abuse of power by a judge, which impedes the administration of justice or pursues illegitimate aims (infliction of damage to other persons or public interests, etc.) under the disguise of complying with the requirements of law.

Thereby, the Constitutional Court of Ukraine considers that any criminal charge against a judge should be based on the provisions of criminal law that are sufficiently clear, understandable, consistent and foreseeable , provided that guarantees are established to ensure independence of a judge in the administration of justice.

2.5. According to the Constitution of Ukraine, the basic principles of judicial include, in particular, the binding nature of a court decision (Article 129 paragraph 2 subparagraph 99); a court decision is binding (Article 129<sup>1</sup> paragraph 1).

The Recommendation of the Committee of Ministers of the Council of Europe to Member States on Judges: Independence, Efficiency and Responsibilities of 17 November 2010 № CM / Rec (2010) 12 (hereinafter - the Recommendation) declares that "decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law"; "with the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions." (§§ 16, 17 of the Annex to the Recommendation).

Therefore, in order to review a court decision, the law establishes appropriate judicial procedures, which provide for appealing a court decision and submitting it for a legal evaluation by a competent court. The Constitution of Ukraine does not give other public authorities the power to review a court decision outside judicial process and to weigh it as "unjust".

The Constitutional Court of Ukraine considers that the final court decision shall not be reviewed, with exception of instances established by procedural laws for its review by the respective court, which excludes the possibility of assessing such a decision by the investigator, prosecutor in performing actions that result in holding a judge criminally liable.

2.6. The effective implementation of the right to judicial protection depends on many factors in the judicial system and the judiciary, notably on ensuring independence of judges in the administration of justice.

The independence and inviolability of a judge are guaranteed by the Constitution and laws of Ukraine; influence on a judge in any way is prohibited; a judge, when administering justice, is independent and guided by the rule of law (Articles 126 paragraph 1, 126 paragraph 2, 129 paragraph 1 of the Basic Law of Ukraine).

The Constitutional Court of Ukraine stressed that “the consolidation at the constitutional level of the provision according to which justice in Ukraine is administered exclusively by courts, as well as the provision on the independence of judges creates the most important guarantee of respect for the constitutional human and civil rights and freedoms” and “is aimed at creation of an effective mechanism for fulfilling the tasks assigned to the judiciary, which consist, first of all, in the protection of human and civil rights and freedoms, ensuring the rule of law and the constitutional order in the state” (paragraph 4 of item 3.1 of the motivation part of the Decision of December 4, 2018 № 11-r/2018).

The Recommendation, with reference to Article 6 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, states that “the purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence” (§ 3 of the Annex to the Recommendation).

The establishment of criminal liability for the delivery of a "knowingly unjust" court decision creates risks and opportunities to influence judges due to the vagueness and inconsistency of the disposition of Article 375 of the Code.

The Constitutional Court of Ukraine considers that based on the principle of independence of judges guaranteed by the Constitution of Ukraine, the disputed provisions of the Code, which define acts that are crimes, the subject of which is a judge, should be formulated by the legislator in such a way so that a state body, any official are not able to use them as a means of influencing a judge and interfering with the administration of justice.

The constitutional provisions on the independence of judges are outweighed due to the legal uncertainty of Article 375 of the Code.

Given the above, the Constitutional Court of Ukraine considers that Article 375 of the Code contradicts the principle of the rule of law, namely its such element as legal certainty, and does not comply with the principles of independence of judges, binding nature of court decisions, and therefore contradicts Articles 8 paragraph 1, 126 paragraph 1, 126 paragraph 2, 129 paragraph 1, 129 paragraph 2 Subparagraph 9 of the Constitution of Ukraine.

3. Pursuant to Article 152 paragraph 2 of the Constitution of Ukraine, Article 91 of the Law of Ukraine "On the Constitutional Court of Ukraine", laws, other acts or their separate provisions declared unconstitutional shall cease to be valid from the date of the adoption by the Constitutional Court of the decision on their unconstitutionality, unless otherwise established by the decision itself, but not earlier than the day of its adoption.

Having established the non-compliance of Article 375 of the Code with the Constitution of Ukraine (unconstitutionality), the Constitutional Court of Ukraine considers it relevant to postpone repealling this article for six months from the date of the adoption by the Constitutional Court of the decision on its unconstitutionality.

In this connection, the Verkhovna Rada of Ukraine shall bring the normative regulation established by Article 375 of the Code, which is declared unconstitutional, into compliance with the Constitution of Ukraine, as well as with this Decision.

Taking into account the above and guided by Articles 147, 150, 151<sup>2</sup>, 152, 153 of the Constitution of Ukraine, on the basis of Articles 7, 32, 35, 65, 66, 74, 84, 88, 89, 91, 92, 94, 97 of the Law of Ukraine "On the Constitutional Court of Ukraine", the Constitutional Court of Ukraine

#### **h e l d:**

1. To declare Article 375 of the Criminal Code of Ukraine as non-compliant with the Constitution of Ukraine (unconstitutional).

2. Article 375 of the Criminal Code of Ukraine, declared unconstitutional, shall cease to be valid six months after the adoption of this Decision by the Constitutional Court of Ukraine.

3. The Decision of the Constitutional Court of Ukraine is binding, final and shall not be appealed.

The Decision of the Constitutional Court of Ukraine shall be published in the Bulletin of the Constitutional Court of Ukraine.