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Research Article

Problematic Issues of Ensuring Human Rights in Ukraine Regarding the Application of Acts Declared Unconstitutional

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Abstract

The article offers the results of research into the problem of ensuring human rights in connection with the application of acts recognized by the Constitutional Court of Ukraine as unconstitutional. The analysis of statistical data on the results of the consideration by the Constitutional Court of Ukraine of constitutional submissions regarding the compliance with the Constitution of Ukraine (constitutionality) of normative legal acts and constitutional complaints of citizens regarding the verification of the conformity of the Constitution of Ukraine of the laws of Ukraine, which were applied in the final court decision, was carried out in the case of the subject of the right to a constitutional complaint. It was concluded that only under the condition of a comprehensive approach to the provision of human rights during the exercise of powers by the state and its officials in law-making and law-enforcement activities, one can hope to solve the problems of ensuring human rights and prevent the application of unconstitutional acts to a person. Based on the statistical data provided by the Secretariat of the Constitutional Court of Ukraine, the authors analyzed the state of regulatory and legal support for a person's exercise of the right to just satisfaction in connection with causing him material or moral damage by acts and actions recognized as unconstitutional. It was concluded that due to the lack of reliable safeguards against the adoption of acts that do not correspond to the Constitution of Ukraine by subjects of authority, currently in Ukraine the mechanism for ensuring human rights does not work properly in connection with the application of acts recognized as unconstitutional to it. Moreover, decisions on recognition of an act applied to a person as unconstitutional by the Constitutional Court of Ukraine take too long. The prescriptions of the third part of Article 152 of the Constitution of Ukraine, which obliges the state to compensate (accordingly with the procedure established by law) material or moral damage caused to people or legal entities by acts and recognized as unconstitutional, are completely declarative in nature, since within 28 years after the adoption of the Constitution of Ukraine, such a document has not been adopted or implemented. The authors conclude that the creation of accountability mechanisms of public authorities is impossible without establishing at the legislative level legal (not fancy political) responsibility for the adoption of unconstitutional acts.

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1. Introduction

Ensuring human rights and freedoms has been and remains a priority for any democratic society. It is not so much a matter of setting the principal directions of such activity, as of the permanently dominant, programmatic, and goal-oriented nature of the determining perspective direction of the state's development. At the same time, human rights are the determining criterion that determines the content and direction of the activities of state-level and local authorities.

The principle of the State's responsibility to the individual for its activities is enshrined in the Constitution of Ukraine, which defines upholding human rights and freedoms as the main obligation of the State. Article 1 of the Constitution defines Ukraine as a sovereign and independent, democratic, social, law-governed state. [1].

These constitutional provisions should be understood in such a way that one of the features of Ukraine as a social state is meeting the public needs in the social welfare, based on the financial capabilities of the state, which is obliged to distribute public wealth fairly and impartially among citizens and territorial communities and strive to balance the budget of Ukraine [2].

The problems of ensuring constitutional rights, freedoms of human and citizen were studied by such scientists as M. Afanasieva, O. Baimuratov, O. Batanov, Y. Barabash, I. Berestova, G. Berchenko, Y. Bysaga, A. Georgitsa, R. Hryniuk, A. Yezerov, V. Zaporozhets, V. Kamp, V. Kolisnyk, A. Kolodiy, V. Kravchenko, S. Lysenkov, O. Martselyak, V. Melashchenko, N. Nyzhnyk, M. Onishchuk, M. Orzikh, H. Prykhodko, V. Pohorilko, O. Pushnyak, Y. Romaniuk, M. Savenko, M. Savchyn, O. Skrypniuk, O. Sovhyria, O. Stepaniuk, V. Telipko, M. Teslenko, Y. Todyka, V. Fedorenko, O. Frytskyi, M. Khavroniuk, G. Hristova, M. Tsvika, T. Tsymbalisty, V. Shapoval, Y. Shemshuchenko, N. Shuklina, O. Yushchyk, T. Ginsburg, A. Kavanagh, D. Robertson, J. Staton and others.

However, the issues of ensuring human rights in Ukraine in connection with the application of acts that are recognized by the Constitutional Court of Ukraine as inconsistent with the Supreme Law of Ukraine (unconstitutional) remain insufficiently studied.

In view of the above, the purpose of this publication is to highlight the results of the study of the problems of ensuring human rights in the exercise of powers by the state and its officials in law-making and law enforcement activities.

2. Results (the Main Text)

Based on this goal, it is the provisions of Part 3 of Article 21 of the Universal Declaration of Human Rights, which establish that the will of the people shall be the basis of state power, that are considered important [3].

The above provisions of this international legal document are reflected in the norms of the Constitution of Ukraine. Thus, Article 3 of the Basic Law of Ukraine recognizes a person’s life, health, security, dignity, honor and inviolability as a paramount social value, thus directs the main state's efforts to ensure human rights and freedoms. The state is responsible to the individual for its activities [1].

In view of the above, the main tasks of the welfare state are to create conditions for the realization of social, cultural and economic human rights, to promote the independence and responsibility of each person for his or her actions, and to provide social assistance to those citizens who, due to circumstances beyond their control, cannot provide an adequate standard of living for themselves and their families.

As stated in Article 5 of the Constitution of Ukraine, Ukraine is a republic where sovereignty resides with the people, who serve as the sole source of power. The Ukrainian people exercise this power both directly and through state authorities and local self-government. The exclusive right to establish and modify the constitutional order belongs to the people and cannot be appropriated by the state, its institutions, or officials. [1].

These constitutional provisions enshrine the principle of popular sovereignty, which assumes the power of the Ukrainian people to be primary, sole and inalienable, hence the bodies of state power and of local self-government only exercise power originating from ukrainian people. The actions of the state, its bodies or officials that lead to the usurpation of the people's exclusive right to determine and amend Ukraine's constitutional system are unconstitutional and unlawful.

According to Article 8 of the Constitution of Ukraine, the Constitution of Ukraine is a legislative act that has the highest legal force. Its norms are of direct action. Laws and other normative legal acts are enacted based on the Constitution of Ukraine and must be in total compliance with it [1].

The supremacy of constitutional norms extends to all spheres of state activity, including the law-making process. The Verkhovna Rada of Ukraine, when adopting laws, has no right to allow inconsistencies regarding any provisions directly affirmed in the Constitution of Ukraine. [4].

However, the realities of today indicate that the modern

law-making process in Ukraine quite often leaves these constitutional and legal prescriptions overboard. Based on the statistics of the European Court of Human Rights, in 2018, Ukraine ranked fourth among the countries whose citizens most often apply to this international judicial institution (1st place – the Russian Federation – 11,750 applications, second place – "other states" – 8,800 applications; Romania – 8,500 applications; Ukraine – 7,520 applications) [5].

These statistics may indicate that Ukraine is one of the four countries that cannot fully fulfill their constitutional obligations (including in terms of the execution of court decisions), which entails dangerous consequences.

The following statistics are no less indicative. As of November 17, 2022, in the period from October 18, 1996 (the start of the functioning of the Constitutional Court of Ukraine), the Secretariat of the Constitutional Court of Ukraine (hereinafter referred to as the CCU) registered 717 constitutional appeals regarding the compliance of regulatory legal acts with the Constitution of Ukraine (constitutionality), of which:

1) laws of Ukraine – 405;
2) Acts of the Cabinet of Ministers of Ukraine - 164;
3) Acts of the President of Ukraine – 92;
4) Acts of the Supreme Council of Ukraine – 51;
5) international agreements – 2;
6) Legislative Acts of the Supreme Council of the Autonomous Republic of Crimea – 18.

Based on the results of consideration of cases on constitutional appeals, the Constitutional Court of Ukraine adopted 155 decisions, which determined the provisions of normative legal acts as inconsistent with the Constitution of Ukraine (unconstitutional), of which:

1) laws of Ukraine – 117;
2) acts of the Cabinet of Ministers of Ukraine – 14;
3) acts of the President of Ukraine – 7;
4) acts of the Supreme Council of Ukraine – 10;
5) international relations – 1;
6) Legislative Acts of the Supreme Council of the Autonomous Republic of Crimea – 6 [6].

Thus, almost 22% of normative legal acts, the constitutionality of which was questioned, were recognized by the Constitutional Court of Ukraine as unconstitutional. At the same time, out of all open constitutional proceedings, 256 were resolving the issue of the constitutionality of the laws of Ukraine, which is about 69%.

No less indicative are the statistical data of the Secretariat of the Constitutional Court of Ukraine on the number of constitutional complaints received by the Court. In 2022, there were 248 such complaints (of which 183 in the period from February 24 to December 31), in 2023 - 412, and in 2024 (as of 04.10.2024) - 356.

Since February 24 to December 31, 2022, the Senate of the Constitutional Court of Ukraine issued 8 rulings in cases involving constitutional complaints, which recognized the laws of Ukraine (their individual provisions) as unconstitutional. In 2023, 9 such decisions were made, and in 2024 (as of October 4) – 6 [7].

These statistics indicate that the number of constitutional complaints submitted by Ukrainian citizens with the Constitutional Court during 2023 increased by more than 60% compared to the previous year of 2022. In total, in less than 3 years of Russia's full-scale invasion of Ukraine, Ukrainian citizens have submitted 1016 constitutional complaints with the Constitutional Court.

Our study gives grounds for the conclusion that the mechanism for ensuring human rights in connection with the application of acts recognized as unconstitutional should consist of such elements as:

1) measures to prevent the adoption by state authorities the normative legal acts that are inconsistent with the Constitution of Ukraine (are unconstitutional);
2) measures aimed at establishing the fact of adoption the unconstitutional normative legal acts by the subject of authority;
3) measures to ensure the exercise by a person of the right to compensation for material or moral harm caused to individuals or legal entities by acts and actions deemed unconstitutional.

It should be stated that it is only a comprehensive approach to ensuring the rights of people at the time of realization by the state and its officials the law-making and law-enforcement activities that enables to solve the problem indicated.

The study showed that today in Ukraine there is no effective mechanism at the legislative level sufficient to prevent the adoption by state authorities of regulatory legal acts that appear to be inconsistent with the Constitution of Ukraine.

At the same time, attention is drawn to the provisions of Chapter XIII "Amendments to the Constitution of Ukraine", which provide for a number of guarantees aimed at preventing unconstitutional changes to the Basic Law of Ukraine. Thus, Article 154 of the Constitution of Ukraine contains a prescription according to which a draft law on amendments to the Constitution of Ukraine may be submitted to the Supreme Council of Ukraine by the President of Ukraine or by at least a third of the people's deputies of Ukraine from the constitutional composition of the Supreme Council of Ukraine.

This provision restricts the range of subjects of the right of legislative initiative who can propose amendments to the Basic Law of Ukraine. According to Part 1 of Article 93 of the Constitution of Ukraine, such a right belongs to the President of Ukraine, People's Deputies of Ukraine and the Cabinet of Ministers of Ukraine.

Article 155 of the Constitution of Ukraine establishes some additional guarantees, stipulating that a draft law on amendments to the Constitution of Ukraine, excluding Section I ("General Principles"), Section III ("Elections. Referendum"), and Chapter XIII ("Amendments to the Constitution of Ukraine"), shall be considered adopted if it has been previously approved by the majority of the constitutional composition of the Supreme Council of Ukraine and is supported by at least two-thirds of the constitutional composition of the

Supreme Council of Ukraine at the following regular parliamentary session.

As you can see, this norm requires:

1) compliance with the established procedure for amending these sections of the Constitution of Ukraine (adoption of the relevant draft law during two consecutive sessions of the Verkhovna Rada of Ukraine);
2) the required number of votes of people's deputies of Ukraine in support of the draft law aimed to amend the Constitution of Ukraine.

Article 156 of the Constitution of Ukraine stipulates that a draft law aimed to amend the Section I "General Principles", Section III "Elections. Referendum", and Chapter XIII "On Amendments to the Constitution of Ukraine" must only be submitted to the Supreme Council of Ukraine by the President of Ukraine or by at least two-thirds of the constitutional composition of the Supreme Council of Ukraine. If adopted by at least two-thirds of the constitutional composition of the Supreme Council, the draft law must be approved through an all-Ukrainian referendum called by the President of Ukraine.

A re-introducing of the draft law to amend Sections I, III, and XIII on the same issue is only possible to the Supreme Council of the upcoming convocation.

As can be seen, this provision contains several additional guarantees that provide for:

1) approval of amendments to Section I "General Principles", Section III "Elections. Referendum" and Section XIII "On Amendments to the Constitution of Ukraine" by holding an all-Ukrainian referendum called by the President of Ukraine;
2) the procedure for resubmitting the draft law on amendments to Sections I, III and XIII of the Constitution of Ukraine concerning the same issue.

Similar guarantee is established in Article 158 of the Constitution of Ukraine. It stipulates that a draft law on amendments to the Constitution of Ukraine, if considered by the Supreme Council of Ukraine but not adopted as law, may be reintroduced no earlier than one year from the date of the decision on this draft law.

Several more guarantees are provided for in Article 157 of the Basic Law of Ukraine, which states that any amendments to the Constitution of Ukraine are prohibited if they propose the abolition or limitation of human and civil rights and freedoms or seek to undermine independence of Ukraine or violate its territorial integrity.

The Constitution of Ukraine cannot be amended under martial law or a state of emergency.

Moreover, the Supreme Council of Ukraine cannot change the same provisions of the Constitution of Ukraine twice during its term of office.

In addition, in accordance with Article 159 of the Constitution of Ukraine, unless the Constitutional Court of Ukraine issues a conclusion on its compliance with the of Articles 157 and 158 of this Constitution, the Supreme Council of Ukraine can not consider a draft law amending the Constitution(emphasized by authors – V.T., S.D.).

It is extremely important that, by carrying out preventive constitutional control over the compliance of draft laws on amendments to the Constitution of Ukraine with the requirements of Articles 157 and 158 of the Constitution of Ukraine, the Constitutional Court of Ukraine does not limit the powers of the Supreme Council of Ukraine to amend the Basic Law of Ukraine, but only ensures the constitutionality of their implementation by the Supreme Council of Ukraine, which is one of the main guarantees of the stability of the Constitution of Ukraine.

Failure by the Supreme Council of Ukraine to comply with this condition is a violation of the principle of exercising state power in Ukraine on the basis of its division into legislative, executive and judicial (Article 6 of the Constitution of Ukraine) [8].

We also draw attention to the provisions of Article 9 of the Constitution of Ukraine, which determine that current international treaties, to which the Supreme Council of Ukraine has given its consent to be bound, form an integral part of Ukraine's national legislation. The adoption of international treaties that conflict with the Constitution of Ukraine is permissible only after making the necessary amendments to the Constitution.

These provisions of the Basic Law of Ukraine are implemented in the Law of Ukraine "On International Treaties of Ukraine". Article 1 of this Law states that its provisions apply to all international treaties of Ukraine regulated by the norms of international law and concluded in line with the Constitution of Ukraine and the requirements of this Law.

Meanwhile, Part 3 of Article 4 of the Law prescribes that proposals for the conclusion of international treaties of Ukraine are submitted after the Ministry of Justice of Ukraine conducts legal evaluation of adherence of the draft international treaty to the Constitution and laws of Ukraine [9].

Thus, this guarantee is a combination of the provisions of Article 9 of the Constitution of Ukraine and Articles 1 and 4 of the Law of Ukraine "On International Treaties of Ukraine", the adherence to which makes it impossible for Ukraine to conclude international treaties that contradict the Constitution of Ukraine.

It can be seen that the legislative consolidation of these guarantees has a positive effect on the solution of the problem of Ukraine's compliance with the procedure for amending the Basic Law of Ukraine and concluding international treaties. It should also be highlighted that the Constitution and laws of Ukraine do not provide for an effective mechanism that would make it impossible for the authorities to adopt anti-constitutional acts and, at the same time, would be factors in ensuring human rights in the execution of state powers in law-making and law enforcement activities.

Only Part 3 of Article 22 of the Basic Law of Ukraine contains a prohibitive norm which, when adopting new laws or amending existing laws, does not allow narrowing the content and scope of existing rights and freedoms. However,

as the realities of today show, this norm is often neglected by legislators, referring to an urgent need and relying on their own arbitrary interpretation of the content of this norm.

Another guarantee should be the rules outlined in Part 2 of Article 94 of the Law of Ukraine "On the Rules of Procedure of the Supreme Council of Ukraine", which provides grounds for the return of a draft law, a draft of another act without including it in the agenda and consideration at a plenary session. Such grounds include the conclusion of the committee responsible for constitutional law that the draft law conflicts with the regulations of the Constitution of Ukraine, except for cases when it comes to amending the Constitution of Ukraine.

In the presence of such a conclusion, the Chairman of the Supreme Council of Ukraine or, in line with the allocation of responsibilities, the First Deputy, Deputy Chairman of the Supreme Council of Ukraine, at the suggestion of the main committee or the temporary special commission or the Conciliation Council, shall return the submitted draft law, draft of the other act to the subject of the right of legislative initiative without including it in the agenda of the session and consideration at the plenary session of the Supreme Council.

However, this fuse, unfortunately, does not always work, because the specified provisions of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine", as a rule, are not applied.

A vivid illustration of this is the absence of the conclusion of the committee responsible for issues of constitutional law on the nonconformity with the Constitution of Ukraine of the regulations of the sensational draft Law of Ukraine "On Government Purification" (reg. No 4359a of 24.07.2014).

Another negative example of this state of affairs is the story of the adoption by the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Activities of the National Anti-Corruption Bureau and the National Agency for the Prevention of Corruption" (reg. No 1660-d dated 30.01.2015), which amended the Code of Ukraine on Administrative Offenses, Economic, Civil Procedure, the Criminal and Criminal Procedure Codes of Ukraine, as well as the Laws of Ukraine "On the Prosecutor's Office", "On Operational and Investigative Activities", "On the National Anti-Corruption Bureau of Ukraine", "On the Prevention of Corruption".

At the time of consideration of this document by the parliament, there was not only the conclusion of the committee responsible for constitutional law, but also an explanatory note to the draft, which breaches the provisions of Article 91of Article 91 of the Law of Ukraine "On the Rules of Procedure of the Supreme Council of Ukraine".

By adopting this Law, the People's Deputies also violated the provisions of Part 6 of Article 3 of the CC of Ukraine (henceforth mentioned as the Criminal Code) of Ukraine, which establish that amendments to Ukraine's laws on criminal responsibility can only be made by laws on amendments to this Code and/or to the criminal procedure legislation of Ukraine, and/or to the legislation of Ukraine on administrative offenses.

A similar requirement is provided for by Part 3 of Article 1 of the Criminal Procedure Code of Ukraine and Part 4 of Article 2 of the Code of Administrative Offenses of Ukraine.

By the adopted Law, the Supreme Council of Ukraine changed the wording of the disposition of Part 1 of Article 368-2 of the CC of Ukraine, establishing liability for "the acquisition by a person authorized to perform the functions of the state or local self-government, by his close person of assets in a significant amount, the legality for the acquisition of which is not confirmed by evidence, as well as the transfer of such assets to any other person."

Also noteworthy is the absence of an opinion on this draft Law of the Main Scientific and Expert Department of the Supreme Council of Ukraine, which, in our opinion, negatively affected the procedure for its consideration by People's Deputies of Ukraine.

In parallel, the Main Legal Department of the Supreme Council of Ukraine made its comments, stressing that the legislative approach used by the drafters to solve the problem does not take into account the provisions of Article 62 of the Constitution of Ukraine regarding the guarantee of the presumption of innocence of a person in the committing of a crime, according to which a person shall be presumed innocent of a crime and shall not be subject to criminal punishment unless their guilt is legally proven and confirmed by a court's guilty verdict.

However, on February 12, 2015, the Law "On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency" was enacted with the backing of 247 People's Deputies of Ukraine.

On the same day, 59 people's deputies of Ukraine filed their application to the Constitutional Court with a constitutional submission regarding the constitutionality of Article 368-2 of the CC of Ukraine.

On February 26, 2019, the Constitutional Court of Ukraine, having considered this submission, issued a reasoned decision No 1-r/2019 in the case No 1-135/2018 (5846/17) on the specified constitutionality and recognized Article 368-2 of the CC of Ukraine as inconsistent with the Constitution of Ukraine (unconstitutional) and invalid.

Without going into a thorough analysis of the decision of the Constitutional Court of Ukraine and the actions committed by the participants in those events (a detective novel can be written about this), we consider it appropriate to pay attention to the consequences with which this story ended.

As stated by the Prosecutor General's Office of Ukraine (letter dated 15.03.2019 No 19/4-450 ex. 19), in Ukraine, during 6 years (the period during which Article 368-2 of the CC of Ukraine was in force), law enforcement agencies registered 435 criminal proceedings on the facts of illegal enrichment, of which 154 were closed, including 153 under paragraphs 1, 2, 4, 6 of part 1 of Article 284 of the Criminal Procedure Code of Ukraine [10].

Pursuant to Part 1 of Article 284 of the Criminal Procedure Code of Ukraine, criminal proceedings are terminated if:

1) the lack of a criminal offense was confirmed;
2) the absence of corpus delicti in the Law was established;
3) sufficient evidence has not been established to prove the guilt of the person in court and the possibilities of obtaining it have been exhausted;
4) a law came into force that abolished criminal liability for an act committed by a person;
5) There is a verdict on the same accusation that has entered into legal force, or a court decision to close criminal proceedings on the same charge.

At the same time, the grounds provided for in paragraphs 1, 2, 4, part 1 of Article 284 of the Criminal Procedure Code of Ukraine refer to the so-called "rehabilitation", i.e. those that completely remove the suspicion of committing a crime from a person.

Thus, in Ukraine, every third criminal proceeding was closed on the grounds that rehabilitate a person in respect of whom the law enforcement agency has suspicions of illegal enrichment.

As stated by the Prosecutor General's Office of Ukraine, for 6 years (January 2013 - February 2019), 8 persons who committed criminal offenses under Article 368-2 of the CC of Ukraine were identified. Thus, it turns out that all this time law enforcement officers were conducting the so-called "fact" cases, in which charges were brought against only 8 persons.

Statistical data provided by the State Ship Administration of Ukraine are no less informative (page of 25.03.2019 No Inf/D 235-19-323/19). In Ukraine, since 2011, 32 individuals have been sued for performing offence under Article 368-2 of the CC of Ukraine, 2 individuals have been convicted by the courts, and about 4 cases have been criminalized by the courts.

Thus, out of 435 criminal proceedings (the number of which is likely to be slightly higher, since the Prosecutor General's Office of Ukraine provided data from 2013), only 32 ended in a guilty verdict. Taking into account the decision of the Constitutional Court of February 26, 2019 No 1-r/2019 in the case No 1-135/2018 (5846/17) on the constitutional appeal of 59 people's deputies of Ukraine regarding the constitutionality of Article 368-2 of the CC of Ukraine, all convicts should have been rehabilitated.

In addition, NABU stated that the exclusion of Article 368-2 from the CC of Ukraine led to the closure of 65 criminal proceedings against officials and deputies in the amount of more than UAH 0.5 billion, including those that are already being heard in court [10].

The adoption by the Supreme Council of Ukraine, contrary to the recommendations of the Main Legal Department of the Verkhovna Rada of Ukraine, of the anti-constitutional version of Article 368-2 of the CC of Ukraine of 12.02.2015 significantly complicated the already insufficiently effective fight against corruption. With this decision, the Ukrainian parliament ignored the generally accepted postulate that anti-corruption policy should be enforced based on high-quality and transparent legislative provisions that align with the Constitution of Ukraine, rather than on norms that severely infringe upon the fundamental rights and freedoms of individuals and citizens.

The following element of the mechanism for ensuring human rights in connection with the application of acts that are recognized as unconstitutional are measures aimed at ascertaining the fact that the subject of authority has adopted normative legal acts that are inconsistent with the Constitution of Ukraine (are unconstitutional).

Finding this fact is a prerequisite for the exercise of the human right to just compensation for the application of acts declared unconstitutional.

Appeals to the courts for the protection of constitutional human and civil rights and freedoms is expressly guaranteed by article 8, paragraph 3, of the Constitution. At the same time, Article 19 of the Basic Law of Ukraine determines that the legal system in our country is founded on principles that prohibit anyone from being compelled to do what is not prescribed by law. State authorities, local self-government bodies, and their officials are required to act solely on the basis of, within the scope of their powers, and in the manner established by the Constitution and laws of Ukraine." [1].

Part 2 of Article 55 of the Basic Law guarantees everyone the right to appeal in court against decisions, actions or inaction of state authorities, local self-government bodies, and state officials.

According to Part 1 of Article 147 of the Constitution of Ukraine, the Constitutional Court of Ukraine is the only body of constitutional jurisdiction in Ukraine. This means that the right to recognize legislative acts or, in some cases, draft laws by the Constitution of Ukraine as inconsistent with the Constitution is the exclusive competence of the Constitutional Court of Ukraine. Thus, every individual is guaranteed the right to submit a constitutional complaint to the Constitutional Court of Ukraine on the grounds defined by the Constitution of Ukraine and in the manner prescribed by Ukrainian law [8].

The implementation of this constitutional norm requires compliance with the following conditions:

1) declaring acts and actions unconstitutional that have caused material or moral harm to an individual or legal entity;
2) establishment of a legal framework for compensation for damages;
3) establishing the fact of causing material or moral harm to a person (physical or legal);
4) availability of appropriate funds in the state budget.

Recognition as unconstitutional of acts and actions that caused material or moral damage to an individual or legal entity is carried out exclusively by the Constitutional Court of Ukraine on the basis of a written petition with the relevant documents and materials submitted to the Court by the subject of the right to a constitutional complaint, which holds that the Ukrainian law applied in the final court decision in their case

(or its specific provisions) is in contradiction with the Constitution of Ukraine.

In view of the above, it can be seen that the establishment of the principles of the development of the rule of law, in accordance with the provisions of Article 1, Part 3 of Article 8, Article 55 of the Constitution of Ukraine, consists, in particular, in guaranteeing everyone judicial protection of rights and freedoms, as well as in introducing an effective mechanism for such protection.

In line with parts one and two of Article 55 of the Constitution of Ukraine, decisions made by state authorities, actions taken by them in the exercise of management functions, as well as the failure to exercise the powers established by law (inaction), may be appealed in court.

In its decisions, the Constitutional Court of Ukraine has consistently emphasized the importance of the provisions of Article 55 of the Constitution of Ukraine regarding the protection of the rights and freedoms of everyone in judicial proceedings against any decisions, actions or inaction of authorities and officials, as well as regarding the impossibility of denying justice (Resolution No. 6-зп of November 25, 1997, paragraph 1 of the operative part of Resolution No. 9-зп of December 25, 1997).

A constitutional complaint is submitted by a person to the Constitutional Court of Ukraine and is considered by the court if:

1) all domestic legal remedies have been exhausted (including the final court decision reached through appellate review, and, if applicable, the court decision resulting from cassation review as provided by law);
2) no more than three months have elapsed since the final court decision, in which Ukrainian law (or its specific provisions) was applied, entered into force. However, as an exception, a constitutional complaint may be accepted beyond this timeframe if the Court considers it necessary due to reasons of public interest.

Please note that a constitutional complaint can be filed if the final court decision in the person's case came into force no earlier than September 2016.

If the subject of the law to a constitutional complaint has missed the deadline for filing a constitutional complaint due to the fact that he did not have the full text of the court decision, he has the right to express in the constitutional complaint a petition for the renewal of the missed deadline.

Decisions and conclusions of the Constitutional Court of Ukraine are binding. Under the Part 3 of Article 124 of the Constitution of Ukraine, legal proceedings are carried out by the Constitutional Court of Ukraine and courts of general jurisdiction, at the same time Part 5 of this Article states that all court decisions, regardless of their specific forms, adopted by courts on behalf of Ukraine, are mandatory across all of Ukraine. Therefore, the adoption of a court decision in the form of an opinion of the Constitutional Court of Ukraine is binding.

This provision is implemented in Article 69 of the Law of Ukraine "On the Constitutional Court of Ukraine", which stipulates that decisions and conclusions of the Constitutional Court of Ukraine are equally binding.

The Constitutional Court of Ukraine in its Decision of May 23, 2001 No 6-rp/2001 noted that the right to judicial protection is one of the fundamental and inalienable rights and freedoms of individuals and citizens and, as stipulated in Part 2 of Article 64 of the Constitution of Ukraine, they remain inviolable and cannot be limited even during the imposition of martial law or a state of emergency (emphasis added by Volodymyr Tymoshenko, Serhiy Dromov).

Resolution No. 6-зп of November 25, 1997, formulated the legal position of the Constitutional Court of Ukraine, according to which the development of legislation within the framework of Article 55 of the Constitution of Ukraine should follow a progressive course aimed at enhancing judicial protection of human rights and freedoms, particularly by strengthening judicial oversight of the legality and justification of decisions, actions, or inaction of governmental authorities. This legal position aligns with the provisions of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth referred to as the Convention) regarding effective remedies in cases of violations committed by individuals exercising their official powers.

The realization of the right to challenge decisions, actions, or inaction of these entities must also comply with the requirement of ensuring access to justice, which is spelled out in international legal documents – the Universal Declaration of Human Rights (Article 8), the International Covenant on Civil and Political Rights (Article 14), the Convention (Article 6), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on November 29, 1985 (paragraph 4).

The adoption by the Constitutional Court of Ukraine of a decision to recognize as unconstitutional normative legal acts and actions that caused material or moral damage to an individual or legal entity is sometimes a matter of a long time. For example, the Constitutional Court of Ukraine received constitutional appeals from the Supreme Court of Ukraine:

1) on the constitutionality of the regulations of paragraph 6 of part 1, paragraphs 2, 13 of part 2, part 3 of Article 3 of the Law of Ukraine "On Government Cleansing" (from 20.11.2014);
2) on compliance with the norms of part 3 of Article 22, part 1 of Article 38, Article 58, part 2 of Article 61, part 1 of Article 62, part 1 of Article 64 of the Constitution of Ukraine, part 3 of Article 1, paragraphs 7, 8, 9 of part 1, paragraph 4 of part 2 of Article 3, paragraph 2 of the section "Final and Transitional Provisions" of the Law of Ukraine "On Government Cleansing" (as of 23.03.2015);
3) on the compliance (constitutionality) of Part 3 of Article 4 of the Law of Ukraine "On Government Cleansing" with the provisions of Article 38, Part 2 of Article 61, Part 1 of Article 62 of the Constitution of Ukraine (as of

28.12.2015).

Also, the Constitutional Court of Ukraine received a constitutional appeal of 47 people's deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of parts three, six of Article 1, parts one, two, three, four, eight of Article 3, paragraph 2 of part five of Article 5, paragraph 2 of the Final and Transitional Provisions of the Law of Ukraine "On Government Cleansing" (dated 20.01.2015).

In the column "status of consideration" on the page of the official website of the Constitutional Court of Ukraine it is written: "Constitutional proceedings in the case were opened by decisions of the panels of judges of the Constitutional Court of Ukraine; By the decision of the Constitutional Court of Ukraine, the cases were combined into one constitutional proceeding. The case is considered at open sessions of the Court on 16.04.2015, 22.10.2015, 23.10.2015, 22.03.2016, 23.06.2020" [11].

On this occasion, we remind you that the Law of Ukraine "On Government Cleansing" was adopted by the Supreme Council of Ukraine on 16.09.2014, signed by the President of Ukraine on 09.10.2014, and entered into force on 16.10.2014.

This Law prohibits individuals from holding certain positions (being in service) (with the exception of elective positions) in state authorities and local self-government bodies for ten years from the date of its entry into force.

It should be noted that on 16.10.2024, the ban expired, and the decision on the case of compliance of the provisions of this Law with the Constitution of Ukraine has not yet been made by the Constitutional Court of Ukraine.

As stipulated by the Part 1 of Article 3 of the Constitution of Ukraine, an individual, along with their life and health, honor and dignity, inviolability, and security, is recognized as the paramount social value in Ukraine [1].

In line with part 3 of this article, human rights and freedoms, along with their guarantees, define the essence and direction of state activities. The state bears responsibility to the individual for its actions. Ensuring and safeguarding human rights and freedoms constitute the state's primary obligation [1].

The responsibility of the state, state bodies and officials, local self-government bodies to the individual and the people also arises from the content of part two of Article 19 of the Constitution of Ukraine, which state and local self-government authorities, their officials are required to act solely based on, within the scope of their powers, and in accordance with the procedures outlined in the Constitution and laws of Ukraine.

Extremely important for the protection of human rights are the provisions provided for in part three of Article 152 of the Constitution of Ukraine, according to which material or moral damage caused to individuals or legal entities by acts and actions recognized as unconstitutional is compensated by the state in accordance with the procedure established by law [1].

The Supreme Court, as part of the panel of judges of the Cassation Administrative Court, in its ruling of November 10, 2022 in case No 340/2736/20, noted that in the category of cases on compensation for remedy for harm resulting from unconstitutional acts, the defendant is the state, and not a specific subject of power, and the damage was caused not by the inaction of the entity representing the state, but by the unconstitutional act itself, when it was acted upon and applied to a person [12].

However, it should be noted that the Supreme Council of Ukraine has not enacted a law establishing the procedure for remedy for material or moral harm caused to people or legal entities by acts and actions that are recognized as unconstitutional. This was reported by the Ministry of Justice of Ukraine (hereinafter referred to as the Ministry of Justice) in response to an information request dated 27.04.2020 No 14051/0/2-20. At the same time, in order to inform the author of the appeal, it was reported that the general grounds for compensation for material and moral damage are determined by the Civil Code of Ukraine. Cases of this category are considered in civil proceedings in accordance with the norms of the Civil Procedure Code of Ukraine [13].

The Ministry of Justice also reported that it did not have information on the total amount (and for each year separately since 1997) paid by the State as compensation for material or moral damage caused to natural or legal persons by acts and actions recognized as unconstitutional.

Critically assessing this position of the Ministry of Justice, we draw attention to the fact that Part 5 of Article 21 of the Code of Administrative Procedure of Ukraine (henceforth referred to as the Code of Administrative Procedure of Ukraine) provides that claims for compensation for harm resulting from unlawful decisions, actions, or inaction of a public authority, as well as other infringements on the freedoms, and interests of entities in public law relations, or claims for the return of property seized based on decisions of a public authority, shall be considered by an administrative court if they are submitted within the same proceeding alongside a request to resolve a public law dispute. Alternatively, such claims are resolved by the court in civil or economic proceedings.

It should be noted that judicial practice is also not uniform in resolving this issue. Thus, the Supreme Court, as part of the panel of judges of the Cassation Administrative Court, in its ruling of June 10, 2021 in case No 400/4436/20, concluded that the claim for compensation for damage caused by an unconstitutional act is a public right, since the dispute that arose between the parties to the case concerns the plaintiff's right to receive social benefits, which is the subject of consideration by administrative courts [14].

According to the panel of judges of the First Judicial Chamber of the Civil Court of Cassation at the Supreme Court, when applying to the court, the plaintiffs in case No 400/4436/20 substantiated their claims by causing damage by the action of the law, which was recognized as unconstitutional, and not by the illegality of the actions of state authori-

ties. It is evident that the subjects of power acted in line with the law, which was later declared unconstitutional by the Constitutional Court. The panel of judges of the First Judicial Chamber of the Civil Court of Cassation at the Supreme Court believes that this circumstance does not turn the dispute into a public law.

Taking into account the foregoing, the panel of judges of the First Judicial Chamber of the Civil Court of Cassation sent this case to the Grand Chamber of the Supreme Court, which, by its ruling of November 16, 2022, decided to return the case to the panel of judges, as it considered that in such legal relations the dispute is related the jurisdiction of the administrative court [15].

The Supreme Court, as part of the panel of judges of the Cassation Administrative Court, in its ruling in case No 340/2839/20 of November 3, 2022, formulated a legal position on the application of part five of Article 21 of the Code of Administrative Procedure of Ukraine, according to which the filing of claims for the illegality of a decision of a public authority in the same proceeding with claims for compensation for damage caused as a result of the adoption of the law, which was subsequently declared unconstitutional, is not mandatory, since the unconstitutionality of the law has already been established by the Constitutional Court of Ukraine and does not require additional consideration in administrative proceedings [16].

The Supreme Court, as part of the panel of judges of the Cassation Administrative Court, in its rulings in case No 240/10144/20 of April 28, 2022 [17] and in case No 140/4408/20 of September 14, 2022 [18] on claims against the state of Ukraine for compensation for material damage caused by laws recognized as unconstitutional, referring to part two of Article 152 of the Constitution of Ukraine and Article 91 of the Law of Ukraine "On the Constitutional Court of Ukraine", notes, that laws, other acts or individual provisions, which are declared unconstitutional must cease to have legal force from the date the Constitutional Court of Ukraine adopts a decision on their inconformity with the Constitution, unless otherwise specified in the decision itself, but not before the date of its adoption [17, 18].

This means that the decision of the Constitutional Court of Ukraine on the unconstitutionality of an act changes the legislative regulation only regarding the legal relations that will take place from the date of such a decision.

Material and moral damage caused by the application of an unconstitutional act to a person arises during the period when such an act was in force and has not yet been recognized as inconsistent with the Constitution of Ukraine. Such an act a priori cannot cause harm after it has expired by the decision of the Constitutional Court of Ukraine. Reparations always occur as a result of an unconstitutional act applied in the past. That is, we are talking about the retrospective responsibility of the state to the person (emphasized by authors – V.T., S.D.).

The recognition by the Constitutional Court of Ukraine of the unconstitutionality of an act or its individual provisions means that they did not correspond to the provisions of the Constitution from the moment of their adoption, and not from the moment of their application. By the adopted resolution, the Constitutional Court of Ukraine establishes the legal fact that arose at the time of the adoption of the unconstitutional act. That is, according to the decision of the Constitutional Court of Ukraine, unconstitutional acts only lose their validity.

We consider it necessary to focus on the need for proper legal regulation of another important issue.

Under article 6 of the Constitution, state power in Ukraine is performed based on the principle of its division into legislative, executive, and judicial branches. Legislative, executive, and judicial authorities perform their functions within the limits established by this Constitution and in compliance with the laws of Ukraine. Additionally, Article 56 of the Basic Law guarantees everyone the right to remedy, at the expense of the state or local self-government bodies, for material and moral harm caused by unlawful decisions, actions, or inaction of state or local self-government bodies, or their officials in the course of exercising their powers.

Furthermore, Part Four of Article 62 of the Constitution of Ukraine stipulates that if a court verdict is annulled as unjust, the state is obliged to compensate for the material and moral harm caused by an unfounded conviction [1].

An act that is unjust in the criminal law sense is an act that is unlawful and unreasonable for those who accept it (for example, on the conviction of an innocent person, the acquittal of a guilty person, unjustified by imposing a more lenient or more severe punishment, etc.).

The Plenum of the Supreme Court of Ukraine in paragraph 16 of its Resolution No. 9 of November 1, 1996 "On the Application of the Constitution of Ukraine in the Administration of Justice" explained that material and moral damage caused in the course of the administration of justice is compensated by the state only to a person who has been unjustly convicted in the situation when the sentence is cancelled as the unjust one [19].

The above-mentioned regulations of Part 3 of Article 152 of the Basic Law also provide for compensation by the State in line with the procedure established by law for material or moral damage caused to individual or legal entities by acts and actions recognized as unconstitutional. The only difference is in the determination of the basis for compensation (unjustified conviction, or recognition of acts and actions that are recognized as unconstitutional).

We are convinced that it is important to highlight that the CC of Ukraine contains a number of articles that establish the criminal responsibility of judges. For example:

1) (article 374);
2) (article 381);
3) (part 2 of Article 387).

The Law of Ukraine "On Amendments to the Criminal and

Criminal Procedure Codes of Ukraine Regarding the Elimination of Contradictions in the Imposition of Punishment for Criminal Offenses" (entered into force on 11.08.2023) excluded from the CC of Ukraine the Article 375, which provided responsibility for the issuance of a knowingly unjust verdict, decision, ruling or order by a judge (judges).

We have to remind that this criminal law norm was declared unconstitutional by the Ruling of the Constitutional Court of Ukraine dated June 11, 2020, in the case concerning the constitutional appeal of 55 people's deputies of Ukraine regarding the compliance (constitutionality) of Article 375 with the Constitution of Ukraine (constitutionality) of the CC of Ukraine No 7-r/2020.

Justifying its conclusion, the Constitutional Court of Ukraine referred to the Decision of July 8, 2016 No 5-rp/2016, which states that one of the objectives of the functional separation of state power into legislative, executive, and judicial branches is, among other things, to clearly define the distribution of powers among various state authorities, which means the independent performance by each of them of their functions and the exercise of powers in line with the Constitution and laws of Ukraine (paragraph two of subparagraph 2.1 of paragraph 2 of the motivational part).

In accordance with the Basic Law of Ukraine, legislative, executive and judicial authorities exercise their powers within the limits established by the Constitution of Ukraine and in accordance with the laws of Ukraine (Part 2 of Article 6); bodies of state power and bodies of local self-government, their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine (Part 2 of Article 19); human and civil rights and freedoms are guarded by the courts (article 55, paragraph 1); justice in Ukraine is exercised solely by the courts; transfer of judicial functions, as well as the assignment of these functions to other authorities or bodies, is prohibited (Article 124, Parts 1 and 2); a judge cannot be held liable for a court decision made by him/her, except in cases of committing a crime or a disciplinary offense (Article 126, Part 4) [1].

Having conducted a systematic analysis of the regulations of Articles 6, 8, 19, Part 1 of Article 55, Articles 124, 126 of the Constitution of Ukraine, the Constitutional Court of Ukraine settled that social relations in the field of justice are under constitutional protection in order to prevent actions that contradict the purpose of justice and prevent the issuance of a court decision, which in its essence cannot be an act of justice [20].

Without denying the feasibility of establishing criminal responsibility of a judge (judges) for the issuance of a knowingly unjust verdict, resolution, ruling or order, the Constitutional Court of Ukraine emphasized that the collocation "knowingly unfair" was borrowed from Article 176 of the CC of Ukraine of 1960.

In light of the results from the analysis of the historical aspect, the wording of the disposition of Article 375 of the CC of Ukraine is recognized as an unsuccessful imitation of the legal practice of the Soviet state. According to the judges of the Constitutional Court of Ukraine, borrowings characteristic of the Soviet state and its constitution reflect a system of principles and values that is contrary to the Constitution of Ukraine, its principles, in particular the principle of the rule of law.

The Constitutional Court of Ukraine concluded that the wording of the disposition of Article 375 of the Code allows for the possibility of its abuse when pre-trial investigation bodies may take actions that could result in the criminal prosecution of a judge solely based on the judicial decision, which, due to the subjective opinion of the investigator, prosecutor, or any other individual, is considered "unfair" (especially in cases of disagreement with the decision).

In addition, the regulations of criminal legislation (including Article 375 of the CC of Ukraine) must comply with the principles of legal certainty, clarity, unambiguity, and predictability. This ensures the administration of justice by a judge based on legality and guarantees the effective perfomance of everyone's constitutional right to judicial protection.

In the motivating part of the Resolution, the Constitutional Court of Ukraine drew attention to the provisions of Part 4 of Article 126 of the Basic Law of Ukraine, according to which a judge cannot be held liable by a court decision, except for committing a crime or a disciplinary offense.

In the Resolution on the unconstitutionality of Article 375 of the CC of Ukraine, the Constitutional Court of Ukraine relied on the provisions of the Report of the European Commission for Democracy through Law (Venice Commission) on the independence of the judiciary, approved at the 82nd plenary meeting on March 12-13, 2010.

The Venice Commission, setting the limits of the "functional immunity of judges", defined it as immunity from criminal prosecution for acts committed in the course of their official duties as a judge, with the exception of intentional crimes, in particular bribery (p. 61).

Thus, a judge may be held criminally liable only if he commits a deliberate offense, arbitrarily abuses the powers of a judge, impedes the administration of justice or pursues illegal goals (causing harm to other persons or public interests, etc.) under the guise of fulfilling the requirements of the law.

Expressing a dissenting opinion on this Decision, the judge of the Constitutional Court of Ukraine A. Pervomaisky, in our opinion, rightly noted the following. The Constitutional Court of Ukraine applied the historical and legal method of research when considering a constitutional complaint, but for unknown reasons, the possibility of using the comparative legal method of research was ignored.

Judge O. Pervomaisky draws attention to the results of comparative studies of criminal responsibility for rendering a knowingly unjust or unlawful judicial decision by a judge, conducted by domestic scientists.

Thus, M. Khavronyuk in his works offered the results of his study of the experience of other states on the issue of criminalization of the judge's unjust judgment and other acts related

to the performance of official duties by a judge. In his opinion, it should be divided into the following categories:

1) states whose legislation does not contain the corpus delicti at all, the special subject of which is a judge related to the performance of his official duties;
2) states whose legislation contains only the corpus delicti, the special subject of which is a judge. These criminal law norms provide for the liability of a judge (judges) for crimes related to the receipt of improper benefits (bribes);
3) states whose legislation provides for a certain corpus delicti, the special subject of which is a judge. Such liability is associated with the issuance of an unjust (illegal, etc.) court decision and/or the performance of other duties by the judge [21].

Thus, it seems that the judges of the Constitutional Court of Ukraine should take into account the foreign experience of resolving this issue when making a decision on the unconstitutionality of the criminal law norm on liability for the issuance by a judge (judges) of a knowingly unjust verdict, ruling, definition or order.

Attention should also be paid to attempts to establish criminal liability at the legislative level for the adoption of anti-constitutional acts.

It seems that one of such attempts is the draft Law of Ukraine "On Amendments to the CC of Ukraine Regarding the Establishment of Liability for the Submission and Adoption of Anti-Constitutional Laws" (reg. No 8130 dated 17.10.2022), filed to the Supreme Council of Ukraine by the People's Deputy of Ukraine G. Mamka, (henceforth referred to as the Draft Law) [22].

The purpose of the draft Law, as stated in the explanatory note to it, is "to bring to criminal responsibility persons who have the right of legislative initiative for committing such a crime as the introduction and adoption of a law as a whole, which directly contradicts the Constitution of Ukraine."

To achieve this goal, it is proposed to amend the CC of Ukraine with a new article 364-3, which recognizes as a crime the submission to the Supreme Council of Ukraine for registration the draft law signed by a person who has the right of legislative initiative or represents a body endowed with such a right, and that contradicts the norms of the Constitution of Ukraine or a draft law that in its content (nature) repeats legislative regulations that do not comply with the Constitution of Ukraine (are unconstitutional) according to the Decision of the Constitutional Court of Ukraine, as well as the adoption of such a draft law as a whole.

The idea of establishing the responsibility of state authorities for the adoption of acts recognized as unconstitutional seems reasonable. However, the mechanism of its implementation proposed by the subject of the right of legislative initiative seems to be unsuccessful and unacceptable.

It is noteworthy that when preparing the text of the draft Law, the developer did not take into account a number of provisions of the Constitution of Ukraine, which indicates a violation of the requirements of the principle of the rule of law enshrined in Article 8 of the Constitution of Ukraine, which consists in the fact that the Constitution of Ukraine holds the supreme legal authority. Laws and other normative legal acts are enacted based on the Constitution of Ukraine and shall conform to it [1].

Moreover, under Article 80 of the Constitution of Ukraine, Members of the Parliament of Ukraine are not held legally accountable for their voting results or speeches in parliament and its bodies, except in cases of responsibility for defamation or slander [1].

In view of this imperative constitutional prescription, the implementation of the legislative initiative requires preliminary amendments to the Constitution of Ukraine, without which the said draft Law in itself has signs of anti-constitutional and, in accordance with paragraph 1 of part two of Article 94 of the Rules of Procedure of the Supreme Council of Ukraine, is subject to return to the subject of the right of legislative initiative without inclusion in the agenda and consideration at the plenary session of the Supreme Council.

It is also considered necessary to pay attention to the stipulation of Part 2 of Article 157 of the Constitution of Ukraine, which prohibits amending the Basic Law of Ukraine under martial law or a state of emergency [1].

Taking into account this constitutional prescription and in connection with the adoption by the Supreme Council of Ukraine of the Law of Ukraine "On Approval of the Decree of the President of Ukraine of February 24, 2022 No 64/2022 "On the Introduction of Martial Law in Ukraine", the implementation of this legislative initiative is impossible earlier than the end of the martial law regime introduced in the country.

The wording of the disposition of Article 364-3 of the CC of Ukraine proposed by the author of the draft law does not provide for the differentiation of responsibility for committing acts of different degrees of public danger (the degree of realization of criminal intent).

Those who develop the legislation also did not take into account the fact that several legal facts are required for the implementation of this legislative initiative:

a) entry into force of the Law of Ukraine, the constitutionality of which will be questioned in the future;
b) a decision by the Constitutional Court of Ukraine on the inconsistency of the Law (its certain provisions) with the Constitution of Ukraine.

At the same time, the entry into force of the Law of Ukraine is a necessary condition for the consideration by the Constitutional Court of Ukraine of the issue of its constitutionality (unconstitutionality).

We have to remind that Article 150 of the Constitution of Ukraine establishes that

the Constitutional Court of Ukraine is empowered to resolve matters regarding the constitutionality of laws and other normative legal acts of the Supreme Council of Ukraine, decrees of the President of Ukraine, acts of the Cabinet of

Ministers of Ukraine, and legislative acts of the Supreme Council of the Autonomous Republic of Crimea [1]. Article 151-1 of the Constitution of Ukraine also provides that the Constitutional Court of Ukraine examines the constitutionality of a Ukrainian law upon a constitutional complaint filed by an individual who is convinced that the law applied in the final court ruling in their case is in conflict with the Constitution of Ukraine. A constitutional complaint can only be submitted once all other national legal remedies have been exhausted [1].

According to the Constitution of Ukraine and Article 52 of the Law of Ukraine "On the Constitutional Court of Ukraine", the entities entitled to file a constitutional appeal include: the President of Ukraine, at least forty-five members of the Verkhovna Rada of Ukraine, the Supreme Court, the Ombudsman of the Verkhovna Rada of Ukraine, and the Verkhovna Rada of the Autonomous Republic of Crimea. Meanwhile, an individual who believes that a specific provision of the Ukrainian law applied in the final court decision in their case contradicts the Constitution of Ukraine has the right to file a constitutional complaint (Article 56 of the Law).

It should be also taken into account that in line with the Article 49 of the CC of Ukraine, an individual is relieved of criminal liability if ten years have elapsed from the commission of a serious crime until the sentence becomes final. Thus, after the completion of the procedure for introducing the Law subsequently recognized as unconstitutional, its adoption by the Supreme Council and the ruling of the Constitutional Court of Ukraine on its unconstitutionality, a situation may probably arise when an individual who has perpetrated a criminal offence under Article 364-3 of the CC of Ukraine as provided by the draft Law will be subject to exemption from criminal liability under Article 49 of the CC of Ukraine.

In view of the above, bringing a person to justice for committing a crime in the form of submitting a draft law to the Supreme Council of Ukraine for registration, which is contrary to the norms of the Constitution of Ukraine, seems problematic.

No less problematic is the prosecution for submitting for registration of a draft law that repeats previously declared unconstitutional legislative norms.

Taking into account all of the above, we have prepared an opinion on the feasibility of rejection by the Supreme Council of Ukraine of the draft Law of Ukraine "On Amendments to the CC of Ukraine Regarding the Establishment of Liability for the Introduction and Adoption of Unconstitutional Laws" (reg. No 8130 dated 17.10.2022).

3. Conclusions

Summing up all of the above, it worth mentioning should be noted that the most important functions of the Basic Law of Ukraine include constitutive, law-making and control functions, the proper implementation of which makes it possible to determine transparently the system of legal regulation of the most important social relations, the foundations of the functioning of society and the state, as well as the main directions of development of the national legislation of the country.

Against the backdrop of the war set in motion by the Russian Federation against Ukraine, total corruption in Ukraine and the low efficiency of state authorities, the irresponsibility of state authorities for violating the norms of the Constitution and laws of Ukraine is especially dangerous. First of all, we are talking about the adoption of new regulations that contradict the provisions of the Basic Law of Ukraine.

It is important to highlight that the legislation of Ukraine in the field of ensuring human rights guaranteed by Part 3 of Article 152 of the Constitution of Ukraine is mainly declarative in nature and looks like a ship with a significant number of hull breaches.

All of the above gives grounds for the conclusion that a situation has developed in our country when a person, having exhausted all other possibilities for the protection and restoration of one ś rights, having filed a constitutional complaint with the Constitutional Court of Ukraine and received a decision to apply an anti-constitutional act, is forced to go through a number of tests in order to obtain restoration for the damages, both material and emotional, suffered by him or her.

Numerous facts of violation of constitutional and legal prescriptions by state authorities when adopting new legislative acts, as well as the lack of a legally enshrined effective mechanism for bringing guilty persons to legal responsibility for such offenses, indicate that the statement on the recognition of the leading role of the Basic Law of Ukraine in the national legal system is gradually turning into a legal fiction. Therefore, we must state that the rule works: there is no legal requirement where there are no means to enforce it.

It is also clear that the creation of mechanisms for the responsibility of state authorities is impossible without the establishment at the legislative level of legal (and not bizarre political) responsibility for the adoption of anti-constitutional acts. At the same time, it should be recognized that the solution of this issue is extremely complex and requires in-depth scientific research with the participation of prominent experts in the field of constitutional, criminal, administrative and other branches of law, as well as a thorough study of the experience of foreign states in solving these problems.

Abbreviations

CC of Ukraine	Criminal Code of Ukraine
NABU	The National Anti-Corruption Bureau of Ukraine

Author Contributions

Volodymyr Tymoshenko: Conceptualization, Supervision, Methodology, Validation

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Serhiy Dromov: Writing – original draft, Investigation, Formal Analysis

Oleksandr Dromov: Writing – review & editing, Investigation, Formal Analysis

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Conflicts of Interest

The authors declare no conflicts of interest.

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