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Synthèse / Summary / Kurzfassung / резюме

UKRAINE / UKRAINE / UKRAINE / УКРАИНА

**The Constitutional Court of Ukraine
Конституційний Суд України**

Anglais / English / Englisch / английский

Summary to the National Report

In exercising its powers, the Constitutional Court of Ukraine takes into account the European law, based on the provisions of the Constitution of Ukraine, laws of Ukraine on international treaties of Ukraine as well as on the Constitutional Court of Ukraine. The instruments of the European law are, in particular, international treaties, signed and ratified by Ukraine in the framework of its membership (from 1995) in the Council of Europe: European Conventions, Charters, treaties etc. Pursuant to Article 9 of the Constitution of Ukraine they are part of the national legislation of Ukraine, thus, compulsory for consideration by the Constitutional Court of Ukraine as well. At the same time before the moment Ukraine joins the EU, the legislation of the latter is viewed as such that formally is not mandatory and has no direct effect at its territory.

The jurisprudence of the Constitutional Court of Ukraine includes numerous examples of references to the international sources of law which include both the instruments of international law at the international level (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, ILO Social Security (Minimum Standards) Convention, ILO Medical Care and Sickness Benefits Convention, ILO Freedom of Association and Protection of the Right to Organize Convention, ILO Discrimination (Employment and Occupation) Convention, ILO Termination of Employment Convention, Convention on the Rights of the Child, UN Convention against Corruption etc) and the instruments of the international law at the European level (Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter, European Convention on Social and Medical Assistance, Framework Convention for the Protection of National Minorities, European Convention on International Commercial Arbitration, European Charter for Regional or Minority Languages, European Charter of Local Self-Government etc.). The references to the acts of the European Union as well as the acts of recommendatory character, issued by the bodies of the United Nations Organization and the Council of Europe are rather frequent as well.

The necessity to apply the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the ECHR as a source of law while considering cases by the courts of Ukraine is emphasized in the Law of Ukraine “On the Enforcement of the Judgments and the Application of the ECHR Case-Law”. Its provisions indicate that Ukrainian courts are obliged to enforce all the ECHR judgments against Ukraine.

Actual influence of the ECHR case-law on the jurisprudence of the Constitutional Court of Ukraine becomes manifested both through direct references to the ECHR judgments and through similarity of approaches to the solution of issues and opinions by the Constitutional Court of Ukraine to the legal positions of the ECHR drawn up earlier without references to such source. Recently the number of examples of the references to the ECHR judgments in the case-law of the Constitutional Court of Ukraine has considerably increased. Usually account is taken of the understanding of general principles of law by the ECHR (for instance, some components of the principle of the rule of law, conditions of legitimate nature for

limitation of some rights) or some issues of protection of human rights and freedoms (the right to a fair trial, the right to liberty and security of person, the right to freedom of expression etc.). It directs the development of the case-law of the Constitutional Court of Ukraine towards the mainstream of the European legal tradition, taking into account modern natural and legal approaches and humanistic values.

As an example of inverse influence is the solution by the ECHR of the case “Sukhovetsky v. Ukraine” (Judgment dated March 28, 2006). Having taken into account the state’s extensive powers on introduction of electoral pledge and the arguments of the Constitutional Court of Ukraine on availability of legitimate aim in application of such instrument (Decision dated January 30, 2002 No 2-rp/2002), the ECHR concluded that the impugned measure had pursued a legitimate aim.

At present there are no competing legal positions in the case-law of the Constitutional Court of Ukraine and that of the ECHR. The ECHR case-law, reference to which is made in the decisions of the Constitutional Court of Ukraine, is widely applied by the courts of general jurisdiction of various instances and specialization during the solutions of cases and procedural decision-making. As a rule, it happens in the form of reproduction of the content of the legal positions of ECHR in the form and context, contained in the decisions of the Constitutional Court of Ukraine. However, there are simple references to the relevant decisions of aforementioned judicial bodies, and presentation of a wider version of a legal position of the ECHR, than the quote of the decision of the Constitutional Court of Ukraine. The most often references made by national courts of general jurisdiction include relevant legal positions on various aspects of the protection and implementation of the right to a fair trial, the right of citizens to freedom of expression, on the terms of restrictions on use of the property of public interest, on observance of the principle of legal certainty, requirements of “the quality of the law” and the criterion of “predictability of law” in case a national law envisages the possibility of deprivation of liberty.

In view of the Euro-intergration trends in Ukraine one may foresee the increase of the importance of the legislation and the case-law of the ECJ for the legal system of Ukraine and the activities of the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine takes into account foreign constitutional jurisprudence available in Russian and English. In the sphere of the constitutional law most references concerned the protection of human and citizen’s rights and freedoms (in particular, the right to life, the right to liberty and security of person, the right to private and family life, the right to social security). Judicial practice of other states was examined while considering issues on tax law as well as criminal law and process.

The example of inverse influence is the reference made in the Decision of the Constitutional Court of the Slovak Republic dated February 11, 2009 No. PL.ÚS 6/08 to the Decision of the Constitutional Court of Ukraine dated January 30, 2002 No.2-rp/2002 (case on the election pledge) and the legal positions formulated in it regarding the aim of application of the institute of election pledge. Another example is the reference made in the Opinion of the Constitutional Court of the Republic of Belarus dated March 11, 2004 No.3-171/2004 (on application of death penalty as a

type of punishment) to the relevant experience of Ukraine – the Decision of the Constitutional Court of Ukraine dated December 29, 1999 No11-rp/99.

In addition to mutual reception of the case-law, there are other forms of cooperation with constitutional courts of foreign countries. For instance, the Constitutional Court of Ukraine participates in multilateral cooperation in the form of conferences, seminars, official meetings between bodies of constitutional jurisdiction, implemented in the framework of the World Conference of Constitutional Justice, the Conference of European Constitutional Courts, Conference of the Constitutional Control Organs of the Countries of Young Democracy, the European Commission “For Democracy Through Law” (Venice Commission). Bilateral cooperation is also widely applied. The Constitutional Court of Ukraine has signed Memoranda on development of co-operation with 9 bodies of constitutional jurisdiction of foreign countries.