**Identification: UKR-2020-**

а) Ukraine/ b) Constitutional Court / с) Grand Chamber / d) 28.08.2020 / е) № 10-r/2020 / f)constitutionality of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures", the provisions of Articles 29.1 and 29.3 of the Law "On the State Budget of Ukraine for 2020", paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for2020"") / g) Офіційний вісник України, Ophitsiynyi Visnyk Ukrayiny (Official Gazette) № / 2020 / h)

**Keywords of the Systematic Thesaurus:**

**03.10 General Principles** - Certainty of the law

**04.06.02 Institutions -** Executive bodies – Powers

**04.07** **Institutions** - Judicial bodies

**Keywords of the alphabetical index:**

[Judge](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20Index:%22Judge%22%5d), remuneration, [change](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20Index:%22Judge,%20remuneration,%20change%22%5d) / [Judge](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20Index:%22Judge%22%5d), remuneration, [guarantee](http://www.codices.coe.int/NXT/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=%7bCodices%7d$jumplink_q=%5bfield%20E_Alphabetical%20Index:%22Judge,%20remuneration,%20guarantee%22%5d) / Judge, remuneration, reduction, coronavirus/ Judge, salary, judicial independence.

**Headnotes:**

The provisions of Articles 29.1, 29.3 of the Law “On the State Budget of Ukraine for 2020” of November 14, 2019 No. 294–IX as amended, and the provisions of paragraph 2.9 of Section II “Final Provisions” of the Law of Ukraine “On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020”” of April 13, 2020 No. 553–IX are inconsistent with the Constitution (unconstitutional).

**Summary:**

The subject of the right to constitutional petition - the Supreme Court - appealed to the Constitutional Court of Ukraine to declare unconstitutional the provisions of paragraphs 3.5, 3.6, 3.7, 3.14, paragraph 6.6 of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures" of May 20, 2020 No.392 (hereinafter – the Resolution No.392), paragraphs 10, 17 of the Procedure for implementing anti-epidemic measures related to self-isolation, approved by the Resolution No.392 (hereinafter - the Procedure), Articles 29.1, 29.3 of the Law of Ukraine "On the State Budget of Ukraine for 2020" of November 14, 2019 No. 294–IX as amended (hereinafter - the Law No.294), paragraph 2.9 of Section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020"" of April 13, 2020 No. 553–IX (hereinafter - the Law No.553).

 The disputed provisions of paragraph 3 of Resolution No.392 for the period of quarantine prohibited, in particular:

- holding mass (cultural, entertainment, sports, social, religious, advertising and other) events with more than 10 participants (subparagraph 5);

- operation of public catering establishments (restaurants, cafes, etc.), shopping and entertainment centers (except for the shops located in them), activities of establishments providing accommodation services, entertainment establishments, fitness centers, cultural establishments (subparagraph 6);

- regular and irregular transportation of passengers by road in urban, suburban, intercity, intra-regional and inter-regional communication, in particular passenger transportation on city bus routes in the mode of a minibus (subparagraph 7);

- carrying out planned measures for hospitalisation by health care institutions (subparagraph 14).

Paragraph 6.6 of the Resolution No.392 provided that persons who had reached the age of 60 were subject to compulsory self-isolation.

 Paragraphs 10 and 17 of the Procedure for persons in need of self-isolation require permanent residence in a place of self-isolation determined by them, keeping them out of contact with persons other than those with whom they live together, as well as some concessions on the regime of self-isolation are provided.

 The Constitutional Court notes that according to Article 64 of the Constitution, the constitutional human and citizen’s rights and freedoms may not be restricted, except in cases provided for by the Constitution of Ukraine; in conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions; the rights and freedoms provided for in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of the Constitution may not be restricted.

 The Constitutional Court emphasises that the restriction of the constitutional human and citizen’s rights and freedoms is possible in cases determined by the Constitution. Such a restriction may be established only by law - an act adopted by the Verkhovna Rada as the sole legislative body in Ukraine. Establishing such a restriction by adoption of regulations contradicts Articles 1, 3, 6, 8, 19 and 64 of the Constitution.

During the Constitutional Court's consideration of this case, the Cabinet of Ministers, by the Resolution "On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine" of June 17, 2020 No. 500, amended the title of the Resolution No. 392, paragraph 3 of the Resolution No. 392, setting it out in a new wording, as well as deleted paragraph 6.6 of the Resolution No. 392.

 In addition, according to paragraph 2 of the list of repealed resolutions of the Cabinet of Ministers, approved by the Resolution of the Cabinet of Ministers "On the establishment of quarantine and the introduction of enhanced anti-epidemic measures in the area with a significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2" of July 22, 2020 No. 641, paragraphs 2-8, 11, 12, 121-123, 13–16 of the Resolution No. 392 were declared invalid. Since paragraph 6 of the Resolution No. 392, which approved the Procedure, has expired, the Procedure has also expired, so there are grounds to terminate the constitutional proceedings in this case in terms of constitutionality of the provisions of subparagraphs 5, 6, 7, 14 of paragraph 3, paragraph 6.6 of the Resolution No. 392, paragraphs 10, 17 of the Procedure in accordance with Article 62.1.5 of the Law "On the Constitutional Court of Ukraine" - invalidation of the act (specific provisions thereof), which raised the issue of constitutionality.

 The Constitutional Court reiterates that the abolition or amendment by the Law on the State Budget of the scope of rights and guarantees and legislative regulation provided for in special laws is contrary to Articles 6, 19.2 and 130 of the Constitution.

Setting the maximum amount of salaries, cash benefits for employees, servants and officials of state institutions (including public authorities and other state bodies, local governments), provided for in April 2020 and for the period until the end of the month in which the quarantine established by the Cabinet of Ministers of Ukraine is canceled (Articles 29.1, 29.3 of the Law No. 294), is uncertain in time and does not provide predictability of application of these rules of law.

That is, the disputed provisions of Article 29 of the Law No. 294 make salaries, cash benefits of employees, servants and officials of the legislative and judicial authorities dependent on the executive branch.

Limiting judges' remuneration is an encroachment on the guarantees of judicial independence.

The Constitutional Court considers that the restriction of the respective payments is permissible under conditions of martial law or state of emergency. However, such restrictions should be introduced proportionately, with clear time limits and in strict accordance with the Constitution and laws.

Such a restriction may also be applied to judges, but after its expiration, the funds lost due to this restriction must be compensated by appropriate payments, as the judge's remuneration is an integral part of the judge's status defined by the Constitution of Ukraine.

Ensuring the execution of the final court decision is a positive obligation of the state, but the disputed provision of the Law No. 553 makes it impossible for the State Treasury of Ukraine to undisputedly write off costs of the state and local budgets on the basis of a court decision until January 1, 2021, which restricts a person's constitutional right to judicial protection.

*Cross-References:*

*Decisions of the Constitutional Court of Ukraine:*

No. 6-rp/99 of June 24, 1999

No. 5-rp/2002 of March 20, 2002

No. 19-rp/2004 of December 1, 2004

No. 8-rp/2005 of October 11, 2005

No. 4-rp/2007 of June 18, 2007

No. 6-rp/2007 of July 9, 2007

No. 10-rp/2008 of May 22, 2008

No. 11-rp/2012 of April 25, 2012

No. 18-rp/2012 of December 13, 2012

No. 3-rp/2013 of June 3, 2013

No. 10-rp/2013 of November 19, 2013

No. 4-rp/2016 of June 8, 2016

No. 11-r/2018 of December 4, 2018

No. 2-r(II)/2019 of May 15, 2019

No. 1-r/2020 of January 23, 2020

No. 2-r/2020 of February 18, 2020

No. 3-r/2020 of February 27, 2020

No. 4-r/2020 of March 11, 2020

*Judgments of the European Court of Human Rights:*

* in the case of Osovska and Others v. Ukraine of June 28, 2018 (application no. 2075/13 and others),
* in the case of Yuriy Ivanov v. Ukraine of October 15, 2009 (application no. 40450/04),
* in the case of Burmych and Others v. Ukraine of October 12, 2017 (application no. 46852/13 and others).

**Language:** Ukrainian.