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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Guidelines
for the presentation of contributions
to the *e-Bulletin on Constitutional Case-Law*
and CODICES

The *Guidelines for the presentation of contributions to the e-Bulletin on Constitutional Case-law and CODICES*¹ should facilitate the production of these publications. The Secretariat of the Venice Commission would be grateful to liaison officers if they could follow these guidelines when preparing their contributions. This would greatly contribute to the harmonisation of the CODICES database as well as speeding up the production of the e-Bulletin and the CODICES database.

Please send precis of the most relevant of your recent case-law and try to remain within the 1,200 word limit.

Format

Liaison officers should send their contributions to the Secretariat by e-mail.

Liaison officers should always send their contributions along with the full text of the judgments in the original language, and in other languages, if available (by e-mail).

For the CODICES-database users, it is important to have the *précis* and the full text of the judgments in one place. Some CODICES-database users may be able to read the full texts in their original language or to Google translate specific paragraphs.

The CODICES database can also be used for the exchange of information within regional or linguistic groups of the World Conference on Constitutional Justice. Searches by regional group can be carried out in the CODICES database.

Respecting presentation norms

Précis are processed automatically by computer macros (programmes) in order to be fed into the CODICES database. It is therefore important to respect the norms for writing zone titles, keywords of the Systematic Thesaurus and the Alphabetical Index (slashes, spacing, etc.); these elements will otherwise not properly be recognised by the macros. The same applies to citations of constitutions, where links to the texts of the corresponding article are established automatically (see Zone 5 "Summary" below).

Drafting

Liaison officers should take into account that *précis* in respect of one country will almost certainly be read by users in another country. *Précis* should therefore be drafted using simple terms and short sentences. An explanation for legal concepts used in the *précis* that are particular to the liaison officer's country should be provided, if possible.

Liaison officers can follow the editing and translation process of their contributions and consult the contributions of other courts on the CODICES website: www.codices.coe.int under « Précis being processed ».

Statistics

Statistics no longer need to be reported as the e-Bulletin format does not allow for it.

¹ Liaison officers or correspondents from courts linked to the Venice Commission by an agreement with a regional body (e.g. ACCF, SACJF) contribute to the CODICES database. Liaison officers from courts the country of which has member or observer status with the Venice Commission also contribute to the e-Bulletin.

ZONES

The *précis* should be presented *in chronological order*, using the following eight zones:

Zone 1 “Identification:”

Zone 2 “Keywords of the Systematic Thesaurus:”

Zone 3 “Keywords of the Alphabetical Index:”

Zone 4 “Headnotes:” (*Leitsätze, Massime*) (key legal principles that emerge from the case)

Zone 5 “Summary:” (explanation of the legal reasoning, of the factual circumstances, etc.)

Zone 6 “Supplementary information:” (optional)

Zone 7 “Cross-references:” (optional)

Zone 8 “Languages:”

Title of zones

- in lowercase with a capital letter at the beginning
- immediately followed by a colon “:”
- no numbers in front of the titles
- if zones 6 or 7 are not used, the title of the zone should be omitted.

Please do not use footnotes and do not enter any formatting codes, page breaks, etc., except for italics because *précis* are formatted automatically. In Word, do not use any style other than “Normal”.

The titles of zones 3 and 8 are always in the plural form, even if there is only one “keyword” or one “language”.

Please do not use **abbreviations**. They might be familiar to readers in your country, but unknown to readers of the Bulletin from another country. If the use of abbreviations cannot be avoided, then please introduce it in brackets following the first occurrence in the *précis* of the full wording: e.g. “Administrative Disputes Act (hereinafter, the «ADA»)”.

Précis should not exceed a total of 1200 words (zones headnotes, summary, supplementary information and cross-references included).

Zone 1 - Identification:

Zone 1 contains the identification number of the *précis*, e.g. “UKR-2020-2-014”, (**this number is attributed by the Secretariat in Strasbourg**), and the references that are needed to identify the decision. It is divided into eight Sub-Zones:

- a) Country
- b) Name of the Court
- c) Chamber (if applicable)
- d) Date of decision given
- e) Number of the decision

- f) Title of the decision (if applicable)
- g) Official publications – including ECLI
- h) Non-official publications

Please separate the Sub-Zones a) to g) with a space, slash, space “ / ”; and end Sub-Zone h) with a full stop “.”. There is no line break between Sub-Zones a) to h).

Do not delete any of the Sub-Zones, even if they remain empty. In the following example, zone c) is empty:

Identification: MKD-2020-2-002

a) Republic of North Macedonia / **b)** Constitutional Court / **c)** / **d)** 12.05.2020 / e) U.br.94/2019 / **f)** / **g)** / **h)** CODICES (English, Macedonian).

Date

Under d), only **one** date can be included. If the *précis* covers several decisions, use the date of the oldest decision. The date should be entered in the following sequence: day, month, year (DD.MM.YYYY) separated by a dot:

“d) 12.05.2020 / ” corresponds to a decision of 12 May 2020.

The first section, “12”, is always composed of two numbers, which indicates the day, the second one “05” indicates the month, May in this example, and the third one the year, indicated in full “2020”.

Decision number

The entry under e), of the decision or judgment number should be limited to this number only, not preceded by anything else, such as “Decision”, “Judgment” or “Number”. For example:

“e) 2 BvR 1464/11”

When reference is made to two or more decisions or judgments, they should be separated with a comma, e.g. “39692/09, 40713/09, 41008/09”. There should be no “and” before the last number.

Official publications

In Zone g), official publications, i.e. in the court's collection or else in the Official Gazette, are cited in the original language and in italics, followed in brackets by the type of publication (Official Gazette) or (Official Digest).

Example: g) *Magyar Közlöny (Official Gazette), 2012/48*

You can also add a European Case Law Identifier (ECLI) number for the decision, where this is applicable.

Example: g) ECLI:DE:BVerfG:2020:rk20200520.2bvr262818

Non-official publications

Non-official publications in the last Sub-Zone h) are cited in the original language and in italics and are not translated. The full title of a publication shall be given, no abbreviations. References to academic works (not only complete re-publications of the case) may be included in this Sub-Zone.

Example: h) [2010] 3 *Weekly Law Reports* 223

If there are several publications, these should be separated by a semi-colon “;”. References to publications that appear once the contribution has been sent should nevertheless be communicated to the Secretariat so that they can be included in the CODICES database.

If you have transmitted the full text in electronic form to the Secretariat, the latter will add a reference to CODICES as a non-official publication in Zone h), e.g. “CODICES (Dutch, French, German)” a decision for which the full text will be available in CODICES in these three languages.

Example: Zone 1 for decision 2020-849 QPC of 17 June 2020 of the Constitutional Council of France, will be as follows:

Identification: FRA-2020-2-007

a) France / **b)** Constitutional Council / **c)** / **d)** 17.06.2020 / **e)** 2020-849 QPC / **f)** Mr Daniel D. and Others (Changes to municipal election dates) / **g)** *Journal officiel de la République française – Lois et Décrets* (Official Gazette), 18.06.2020, text no. 73 / **h)** CODICES (French).

Zone 2 - Keywords of the systematic thesaurus:

See Systematic Thesaurus, Version 22 ([CDL-JU\(2014\)019cor](#)).

The systematic thesaurus is subdivided into five chapters, like the branches of a tree (hence the branched, hierarchical structure of the Thesaurus).

Chapter 1 is the longest of the five chapters and covers the body of constitutional jurisdiction on the basis of which the decision is indexed (Constitutional Court, Supreme Court, Constitutional Council etc.). The keywords in this Chapter should only be used if a relevant procedural question is discussed by the Court. It should not be used to establish statistical data. The *Bulletin* reader or user of the CODICES database should only look for decisions indexed under this Chapter when the subject of the keyword is an issue discussed in the case. For this reason, liaison officers should only use this Chapter sparingly and are encouraged to index decisions starting in the reverse order of the Systematic Thesaurus' chapters, i.e. begin with Chapter 5, then move on to 4, then 3, etc.

Chapter 1.1 deals with the structure of the Court in question, 1.2 covers the different applicants and 1.3 the jurisdiction of the Court. Sub-Chapter 1.3.5 deals with the enactment under review. The various procedural aspects before the Court are found in 1.4. Questions of procedural guarantees before lower-instance courts are found in Chapter 5.3.13 of the Thesaurus. If the type of decision to be made is at issue, Chapter 1.5 should be used. Finally, Chapter 1.6 deals with the effects of the decision.

Chapter 2 covers the sources of constitutional law. 2.1 deals with national and international sources (treaties, case-law, etc.), questions of hierarchy between sources are dealt with in 2.2 and the various techniques of interpretation in 2.3.

Chapter 3 covers the general principles of constitutional law, such as democracy (3.3) or the separation of powers (3.4). The principle of equality also appears in 3.21. It should be noted, however, that this keyword should only be used when the principle of equality is not applied to individuals, but to institutions (e.g. municipalities). In all other cases the keyword "equality" under Chapter 5.2 should be used.

Chapter 4 covers state institutions, notably the head of state (4.4), parliament (4.5), government (4.6) and courts other than the court with constitutional jurisdiction (4.7). Chapter 4.8 applies to states with a federal or regional structure. Chapter 4.9 deals with the various aspects of elections, followed by the institutions such as public finances (4.10), armed forces, police forces and secret services (4.11), the Ombudsman (4.12) and other special categories. Chapter 4.17 deals with issues related to the institutions of the European Union.

Chapter 5 is subdivided in accordance with the two United Nations Covenants: Civil and Political Rights (5.3) and Economic, Social and Cultural Rights (5.4). Chapter 5.1 covers general questions such as the entitlement to rights (5.1.1) and the limitations on fundamental rights (5.1.4). Chapter 5.2 covers the principle of equality applied to individuals. Chapter 5.4 gathers together certain rights known as collective rights.

Footnotes

The footnotes are a very important element in all five chapters of the Thesaurus. They serve to explain the keywords and provide advice as to their correct use. In some cases they also contain cross-references to other keywords that should be used.

Indexing

Another very important element is the indexing of what the reader will see. It is usually the *précis* of the *e-Bulletin on Constitutional Case-Law* that are indexed. This means that only elements that appear in the *précis*-to-be-published should be indexed - not elements that only appear in the full text of the decision which have not been recopied into the *précis*. The rule should therefore be: if an element is important enough to be indexed in the Thesaurus, then include it in the *précis*.

Formal structure of the systematic thesaurus

As explained above, the systematic thesaurus displays the five chapters that it contains in an arborescent structure. The major branches of this "tree" are subdivided into ever finer branches, becoming ever more specific as it branches out.

Take for example the word "equality" applied as a fundamental right:

5. Fundamental Rights

5.2 Equality

- 5.2.2 Criteria of distinction
 - 5.2.2.1 Gender
 - 5.2.2.2 Race

When indexing, spell out the complete "**chain of keywords**" without omitting intermediate elements. For example, when indexing a decision that deals with discrimination based on gender:

"5.2.2.1 Fundamental Rights – Equality – Criteria of distinction – Gender."

If a term is missing in the chain that corresponds to the contents of a decision that you are indexing, then the chain of keywords in the Systematic Thesaurus may be shortened. For instance, in order to index a decision based on a criterion of distinction that is not given in the Thesaurus, such as an arbitrary date:

"5.2.2 Fundamental rights - Civil and political rights - Equality - Criteria of distinction."

In this case the criterion should be added to the list of keywords in the Alphabetical Index. However, as stated above, you should not make shortcuts within chains or mix keywords from different chains.

The “keyword chain” should always begin with a capital letter and end with a full stop “.”.

Examples of keyword chains

I. Wrong (shortcut of keyword chain):

5.3.13.15 **Fundamental Rights** – Impartiality – Civil and political rights.

Correct:

5.3.13.15 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Impartiality.

II. Wrong (joinder of two keyword chains):

5.3.13.15 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Independence – Impartiality.

Correct:

5.3.13.14 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Independence.

5.3.13.15 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Impartiality.

III. Wrong (invention of keyword):

5.3.31 **Fundamental Rights** – Civil and political rights – Right to respect for one's honour and reputation – Libel.

Correct:

5.3.31 **Fundamental Rights** – Civil and political rights – Right to respect for one's honour and reputation.

And add the use of a separate keyword “Libel” in the alphabetical index.

Zone 3 - Keywords of the Alphabetical Index:

The Alphabetical Index is used to index concepts that are not found in the Systematic Thesaurus, but that only cover constitutional law issues. The role of the Alphabetical Index is therefore to index other branches of law (civil, criminal etc.) as well as to refine or narrow down a keyword of the Thesaurus (see the "libel" example above). It is used especially to index legal keywords, but may also cover factual matters such as "housing" or "forest".

Liaison officers are free to add new keywords to the Alphabetical Index. However, before doing so, they should look through the Alphabetical index and see whether they can use one of the existing keywords.

Avoid using plural forms for the keywords of the Alphabetical Index, where possible.

Avoid the repetition of keywords of the Systematic Thesaurus. However, elements that appear in the footnotes of the Thesaurus may be used in the Alphabetical Index.

Keywords may consist of more than one word, but their total length must not exceed 80 characters including spaces between words. The keywords should be separated by a space, slash, space " / " and begin with a capital letter. The list of keywords should end with a full stop ".".

The most important element of the keyword should be placed first followed by a comma. Prepositions at the end of such inverted keywords should be deleted:

Example: "Administration of local communities" becomes

"Local community, administration" (*the keywords are inverted to place the most important element first; the preposition "of" is deleted and the keyword is singular*)

These rules will not apply to composite terms designating a well-defined legal concept.

Example: "Free movement of persons" is correct.

Some keywords are used to group topics that belong together e.g. media, election, education, housing. Therefore do not use "Radio, licence" but "Media, radio, licence".

Zone 4 - Headnotes:

Zone 4 contains a short summary with the headnotes (*Leitsätze, Massime*), key legal principles that emerge from the case. They should not contain extracts from the decision, but a summary of the main contents. Each legal issue considered in the decision should be summarised in one paragraph. This information should be abstract and **not contain any reference to the particular facts of the case**. Consequently, there should be no mention of "The Constitutional Court decided that ...". The main legal elements of the case should be briefly presented in the form of full sentences. A mere enumeration of points raised should find its place in the Systematic Thesaurus or in the Alphabetical Index.

As a general rule, headnotes should indicate the content of legal norms (e.g. "freedom of expression"). Their citation (e.g. "Article 3 of the Constitution") may be added. For this citation, see "Zone 5 - Summary" below.

Example: "The right to respect for one's private and family life, guaranteed under Article 22 of the Constitution and Article 8 ECHR, is not absolute."

Please note that for example, Article 8 of the European Convention on Human Rights is drafted as follows in the précis: Article 8 ECHR. If a mere reference to the Convention is made without referring to an Article in particular, the whole name of the Convention should be spelled out.

Zone 5 - Summary:

This Zone should briefly describe the main facts of the case, the procedure followed, details on who appealed to the Court; what the law under scrutiny dealt with; the arguments put forward by the petitioner; the Court's assessment of the petitioner's arguments; the reasons given by the Court for its decision, including what factors it considered to be decisive in the case and why the decision was taken, and, if available, information on dissenting opinions. Additional information on the legal reasoning (*ratio decidendi*) behind the decision can be given without, however, repeating the headnotes.

The whole *précis* must not exceed 1200 words (this limit applies to the total of the zones headnotes, summary, supplementary information and references).

Sections - Liaison officers are encouraged, when appropriate, to systematically separate the cases into:

- I. Facts (including case history);
- II. Arguments and conclusion of the Court (see for example, EST-2009-2-007 in the appendix);
- III. This section may be included for dissenting and concurring opinions, which should not appear in Zone 6 – Supplementary information (see below).

Harmonising citations is very important because it allows the automatic creation of links from the *précis* to the relevant texts. The following rules should be followed:

1. Quoting legal texts

You should not repeatedly cite your Constitution or your Court in full throughout the text as in most cases it is clear from the context which Constitution or Court you are referring to, e.g. not "the Constitutional Court of the Republic of XY" or "the Constitution of XY" but rather "the Constitutional Court" and "the Constitution". Should there be a possibility of confusion with other Constitutional Courts or Constitutions, then please cite them accordingly. You should also not refer to "our" Court or "our Constitution". Since the *précis* will become part of CODICES, you should not refer to "now" in time, but rather to "at the time of the decision".

When quoting a legal text, you should use the standard formula: e.g. "the Law on the Protection of Personal Data (hereinafter, the "Law")". The same should apply to quoting a State body, e.g. "the Ministry of Foreign Affairs (hereinafter, the "Ministry")".

2. Quoting in the original language

If you wish to use the name of a national institution in the original language, cite it at the first occurrence in the *précis* between brackets and in Italics preceded by the generic term of this institution (e.g. "Parliament (*Nationalrat*)". In the following citations within the same *précis*, please use the generic term only (e.g. "Parliament"). The titles of laws should not appear in the original language.

3. Quoting of articles

When you cite articles, do not to use the abbreviation "Art.". Please, write "Article" in full.

On the other hand, sub-divisions of articles should be referred to in the following way:

"Article 3.2.a" rather than "Article 3, section 2, sub-section a"

"According to Article 1.3" rather than "according to Article 1 item paragraph 3"

Only the citation of specific sentences remains in full, for example:

"Second Sentence of Article 1.3.3 of the Constitution".

For legal texts, in particular internal legislation, which do not use articles, "Section" or the symbol "§" can be used: (*Note that in French "section" or "§" will be translated as "article"*):

Example: « § 194.2 of the Procedural Code of the Canton of Bern ».

A series of Articles shall be referred to in the following form:

"Articles 17, 32, 69 and 117 of the Constitution".

References to articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, its Protocols and articles of the Treaty establishing the European Union should be made using the abbreviations "ECHR" "Protocol ECHR" and "EC":

"Article 6.3 ECHR", "Article 1 Protocol 1 ECHR", or "Article 177 EC".

Do not use the prepositions "of the" before "ECHR" but "ECHR" only.

Make sure that you spell out the name of the Convention (i.e. not ECHR) if you are referring to it without mentioning a specific article, for instance:

"The main responsibility for the effective implementation of the European Convention on Human Rights and its Protocols falls upon the states."

Zone 6 - Supplementary information:

Zone 6 contains additional information, which in contrast to Zone 5, is not part of the decision itself.

Separate opinions are part of the decision and should appear in Zone 5-Summary. Zone 6 is optional and may be used to put the reported cases in context, for example by using such entries as "as a consequence of this decision, the Law on ... has been amended" or "settled case-law". Liaison officers might also wish to give information about the general political context of a decision.

Zone 6 may also be used to set out the articles of the Constitution or other legislation referred to in the decision.

Example: "Legal norms referred to:

Articles 3, 5, 6 and 80 of the Constitution".

Please do not use abbreviations for the legislation.

Zone 7 - Cross-references:

Zone 7 can be used for cross-references to decisions of the same court or other courts, whether published or not.

If a decision has been published in the Bulletin, it should be cited in the following way:

Example: "no. 94-354 DC, 11.01.1995, FRA-1995-1-003".

Bulletin 1995/ was the first Bulletin to use identification numbers and the use of page numbers was discontinued. Using square brackets [] for cross-references will ensure that a link is automatically established in the CODICES database.

The name of publications should appear in italics.

Following the *Special Bulletin on Co-operation between Constitutional Courts*, it was deemed important to make a number of clarifications in order to harmonise the Cross-references and differentiate between certain courts.

Please make sure that any cases referenced in the Summary of the *précis* are also included in the Cross-references section, where it should include the full details of the case (which should not appear in the Summary).

Please put in full the case number and date for references (i.e. the Court in question, if other than the contributing court).

The order of the Cross-References should be as follows:

- Court in question (your own Court)
- European Court of Human Rights
- European Court of Justice
- Other Courts

The format for each of these is as shown in examples below:

Constitutional Court:

- no. 2000-03-01, 30.08.2000, LAT-2000-3-004;
- no. 2004-18-0106, 13.05.2005, LAT-2005-2-005.

European Court of Human Rights:

- *Erkagic v. Croatia*, no. 51198/08, 25.04.2013;
- *Mader v. Croatia*, no. 56185/07, 21.06.2011;
- *Zdanoka v. Latvia [GC]*, no. 58278/00, 16.03.2006;
- *Sidabras and Dziutas v. Lithuania*; nos. 55480/00 and 59330/00, 27.07.2004, *Reports of Judgments and Decisions 2004-VIII*.

Court of Justice of the European Union:

- C-280/00, 24.07.2003, *Altmark Trans and Regierungspräsidium Magdeburg*, [2003] *European Court Reports* I-7747;
- T-46/97, 10.05.2000, *SIC-Sociedade Independente de Comunicação SA v. Commission of the European Communities*, [2000] *European Court Reports* II-02125.

Other Courts: [court name + case number + date + publications + bulletin citation]

- Constitutional Review Chamber of the Supreme Court of Estonia, no. 3-4-1-7-02, 15.07.2002, EST-2002-2-006;
- Constitutional Court of Liechtenstein, StGH 1996/6; 30.08.1996, LIE-1996-3-002;
- Constitutional Court of the Czech Republic, no. US 53/2000, 27.02.2001, CZE-2001-1-005;
- Constitutional Court of the Czech Republic, no. Pl. US 9/01, 05.12.2001, CZE-2001-3-017;
- Constitutional Council of France, no. 93-325 DC, 13.08.1993, FRA-1993-2-007;
- Constitutional Court of Italy, no. 28/1995, 19.01.1995, ITA-1995-1-003;
- Supreme Court of the Netherlands, no. 8152, 07.05.1993, NED-1994-2-005.

If there is only one court in "Other courts," then the name of the court in question should be given directly:

Constitutional Tribunal of Poland:

- no. K 39/97, 10.11.1998; POL-1998-3-018.

The name of the court should also be given on a separate line, if there are a significant number of cases from one court:

Constitutional Court of the Czech Republic:

- no. Pl. US 1/92, 26.11.1992, CZE-1992-S-002;
- no. US 53/2000, 27.02.2001, CZE-2001-1-005;
- no. Pl. US 9/01, 05.12.2001, CZE-2001-3-017;
- no. II. US 568/06, 20.02.2007, CZE-2007-1-002.

Legal norms referred to should be included under *Supplementary information*:

- Articles 139 and 140a of the Constitution.

Zone 8 - Languages:

Zone 8 sets out all languages in which a decision is available, followed, if appropriate, by the mention "(translation by the Court)". References to published translations in Zone 1 h) are possible.

Example: "Croatian, English (translation by the Court), German (translation, see above zone h)".

APPENDIX

Identification: UKR-2020-2-014

a) Ukraine / b) Constitutional Court / c) Grand Chamber / d) 28.08.2020 / e) 9-r/2020 / f) Constitutionality of the Decree of the President on the appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau) / g) *Ophitsiynyi Visnyk Ukrayiny* (Official Gazette) / h) CODICES (Ukrainian).

Keywords of the systematic thesaurus:

3.4 General Principles - Separation of powers.

4.4.3.2 Institutions - Head of State - Powers - Relations with the executive bodies.

Keywords of the alphabetical index:

Appointment, head, Anti-Corruption Bureau.

Headnotes:

The President acted outside his powers when he appointed by Decree Artem Sytnyk as Director of the National Anti-Corruption Bureau. However, the decision of the Constitutional Court would not apply to legal relations arising from the performance of official duties by a person appointed by this Decree.

Summary:

I. The applicants in this matter - 51 People's Deputies - appealed to the Constitutional Court for a ruling over the constitutionality of the Decree of the President on "Appointment of Artem Sytnyk as the Director of the National Anti-Corruption Bureau of 16 April 2015, no. 218/2015 (hereinafter, the "Decree.") In their view, it was inconsistent with the provisions of Articles 5.4, 6.2, 8.2, 19.2, and 106.1.31 of the Constitution as the President, acting outside his constitutional powers, had appointed the Director of the National Anti-Corruption Bureau, despite the fact that there was no provision in the Constitution for the President to make appointments to the position specified.

Under Article 106.3 of the Constitution, the President, on the basis of and in pursuance of the Constitution and laws, issues decrees and orders that are binding on the territory of Ukraine.

The President has the right to issue acts only within the limits of his powers.

II. The Constitutional Court noted that the subject matter of the constitutional review was the issue of ensuring the separation of powers and its functioning within the existing form of government. In Ukraine, only the Constitutional Court has the appropriate powers to resolve such issues.

The list of powers of the head of state established by the Constitution, in particular with regard to the appointment of officials of bodies determined by the Constitution, is exhaustive.

The Constitutional Court found that by issuing the Decree and acting on the implementation of the provisions of the Law on the National Anti-Corruption Bureau of 14 October 2014, no. 1698–VII as amended (hereinafter, the "Law"), the President exceeded his constitutional powers.

The President, by appointing the Director of the National Anti-Corruption Bureau by the Decree, operated beyond the limits of his constitutional powers; this position is not included within the list of positions to which the President makes appointments.

According to its status and functions, the National Anti-Corruption Bureau (hereinafter, the "Bureau") is not an advisory, consultative or other subsidiary body or service created by the President under Article 106.1.28 of the Constitution within the funds provided in the State Budget to exercise its powers.

The Decree contradicts the provisions of Article 106 of the Constitution, which provides a list of powers of the President, in particular Article 106.1.31, which states that the list of powers of the President determined by the Constitution is exhaustive.

The Constitutional Court assumed that the Bureau is a state law enforcement body, responsible for preventing, detecting, terminating, investigating and disclosing corruption offences within its jurisdiction, and also preventing the commission of new ones.

The Bureau, as a law enforcement agency, is in fact an executive body, as it consists of central and territorial administrations; its powers extend over the entire territory of the state. It has the characteristics of an executive body.

The appointment by the President of the head of a body that is functionally part of the executive branch will distort the system of checks and balances, disrupt the functional separation of powers and actually change the form of government provided by the Constitution.

The Constitutional Court, taking into account the content of Article 152.2 of the Constitution, and Article 97.1 of the Law on the Constitutional Court, may not extend this Decision to certain legal relations arising as a result of the Decree in the event it is declared unconstitutional.

The Constitutional Court noted the necessity to respect the balance of socially important interests, in particular the rights of participants in legal relations and the proper functioning of the Bureau. It also noted that the persons concerned were not deprived of the opportunity to appeal to the court against the decision, action or omission of an official who had been appointed in an unconstitutional manner to the Bureau.

Choosing a different approach in this case would lead to a revision of legal relations, affecting an indefinite number of parties, paving the way to violation of the principle of legal certainty and balance between constitutionally significant values, which is unacceptable under the Constitution.

III. Judge V. Lemak expressed a dissenting opinion.

Supplementary information:

Opinions of the European Commission for Democracy through Law (Venice Commission) on:

- The balance of powers in the Constitution and legislation of the Principality of Monaco, approved at its 95th plenary session, 14-15 June 2013,
- The Constitution, approved at its 30th plenary session on 7-8 March 1997,
- Amendments to the Law on the Constitutional Tribunal of Poland of 25 June 2015, approved at the 106th plenary session, 11-12 March 2016.

Cross-references:

Constitutional Court:

- no. 6-rp/2001, 23.05. 2001;
- no. 7-rp/2003, 10.04. 2003;
- no. 9-rp/2004, 07.04.2004;
- no. 17-rp/2004, 18.11.2004;
- no. 1-rp/2007, 16.05.2007;
- no. 4-rp/2008, 01.04.2008;
- no. 14-rp/2008, 02.07.2008;
- no. 19-rp/2008, 02.10.2008;
- no. 21-rp/2008, 08.10.2008;
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Opinions of the Constitutional Court:

- 1-v/2003, 30.10.2003;
- 7-v/2019. 16.12.2019.

Languages:

Ukrainian.