



**UNBA Statement
regarding CCU decision on the unconstitutionality of certain provisions
of anti-corruption legislation**

On October 27, 2020, the Constitutional Court of Ukraine (CCU) rendered Decision #13-p/2020 in case #1-24/2020(393/20) on the constitutional petition of 47 Members of Parliament Ukraine from August 4, 2020 concerning the constitutionality of certain provisions of the Law of Ukraine “On Prevention of Corruption” and the Criminal Code of Ukraine.

The CCU declared unconstitutional a number of provisions of the Law of Ukraine “On Prevention of Corruption” in order to ensure the independence of the judiciary from the executive and legislative branches of power. First of all, this refers to the right of the National Agency for the Prevention of Corruption to exercise control functions that directly impact the judiciary, and in particular, the judges of the judiciary and the CCU. Article 366¹ of the Criminal Code of Ukraine was also declared unconstitutional.

This decision provoked a powerful wave of public criticism and speculation from individual experts, activists, representatives of political forces and major government agencies, as well as international partners. At the same time, an information attack began with a call to block the implementation of the CCU decision, accompanied by discrediting both individual judges and the entire Constitutional Court as an institution.

Further escalation of the situation around this decision may have far-reaching devastating consequences for the constitutional foundations of the Ukrainian State, first of all for the principles of the rule of law and the division of state power into legislative, executive and judicial branches, each being independent. In fact, the very stability of the constitutional order and the effectiveness of the principles of the Fundamental Law may be threatened.

The solution to this informational and political crisis situation lies in the legal plane – it is unconditional compliance with the Constitution of Ukraine.

An alternative to this is the spread of legal nihilism, which will adversely affect all agencies of the government and will cause the activities of the state institutions to be unlawful, depriving citizens of opportunities to protect their constitutional rights, freedoms and legitimate interests. The fight against corruption is a sensitive topic for society, and the phenomenon itself is an obstacle to the development of many areas of the economy, efficiency of public administration, the international image of the Ukrainian State. However, such a struggle cannot disregard the Constitution, prevail over legal norms and be outright illegal.

The Constitutional Court is a body of constitutional jurisdiction that ensures the supremacy of the Constitution of Ukraine, decides on the conformity of the laws of Ukraine and other acts with the Constitution of Ukraine, carries out official interpretation of the Constitution of Ukraine, and enjoys other powers.

In accordance with the Law “On the Constitutional Court of Ukraine”, the CCU operates on the basis of the rule of law, independence, collegiality, transparency, openness, complete and comprehensive consideration of cases, validity and binding nature of its decisions and conclusions.

The independence and inviolability of a judge of the Constitutional Court of Ukraine are guaranteed by the Constitution and laws of Ukraine. The relevant law guarantees the independence of CCU judges and their

professional immunities. In particular, Article 24 of the relevant law prohibits influencing a judge of the Constitutional Court in any way. A judge of the CCU cannot be held liable for voting in connection with the Court's decisions and opinions.

The right of the Members of the Parliament and other subjects of constitutional appeal is protected by the law, and cannot be criminalized or restricted for any political reasons, as it is a legal instrument of constitutional scrutiny of the legislation. The procedure for reviewing constitutional appeals is clearly defined.

The Constitution of Ukraine stipulates that decisions and conclusions adopted by the Constitutional Court of Ukraine are binding, final and cannot be appealed. Laws and other acts shall be declared unconstitutional in full or in part by a decision of the Constitutional Court of Ukraine if they do not comply with the Constitution of Ukraine or if the procedure for their consideration, adoption or entry into force, established by the Constitution of Ukraine, has been violated.

Laws, other acts or their standalone provisions declared unconstitutional shall cease to be valid from the day of adoption of the decision by the Constitutional Court of Ukraine on their unconstitutionality, unless otherwise established by the decision itself, but not earlier than the day of its adoption.

Liability is set for non-compliance with the decisions of the CCU, and the Ukrainian State has not yet known any precedents of contesting the legal force of these decisions.

The Bar, as a constitutional institution operating for the purpose of providing professional legal assistance, having essentially the constitutional function of protecting the rights and freedoms of citizens, calls all the State authorities to unconditionally comply with the Constitution of Ukraine.

The Fundamental Law stipulates that state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial. Bodies of legislative, executive and judicial power exercise their authority within the limits and in accordance with the Constitution and the laws of Ukraine.

The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis thereof and must comply therewith. If the Constitutional Court, in the manner prescribed by law, declares certain provisions of the law unconstitutional, the decision of the CCU is binding and must be implemented in full. Its implementation cannot be the subject of any political compromises, let alone a deliberate blockade.

The CCU is not a legislative body and is not empowered to establish new norms or change them. Article 8 of the Law of Ukraine "On the Constitutional Court of Ukraine" clearly establishes the limits of the court's powers in rendering decisions. In particular, it is stated that the CCU considers the issue of compliance with the Constitution of Ukraine (constitutionality) of existing acts (their individual provisions).

Therefore, unconstitutional provisions of any law recognized as such by virtue of any CCU decision must be immediately eliminated through Parliament. All efforts of the subjects of the legislative initiative, Members of Parliament of Ukraine, the legislature in general should be aimed at correcting the "dark spots" in national legislation and restoring the supremacy of the Constitution. This is the manifestation of respect for the Fundamental Law, observance of guarantees of the rights and freedoms of citizens, implementation of the principle of the rule of law.