

THE CONSTITUTIONAL COURT OF UKRAINE
National Report

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"Human Rights and Fundamental Freedoms: the Relationship of
International, Supranational and National Catalogues in the 21st Century"
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**I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS**

I.1 International catalogues of human rights (ECHR, UDHR and ICCPR)

In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?

Pursuant to Article 9 of the Constitution of Ukraine, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.

It follows from this constitutional provision that an international treaty is introduced into the system of the Ukrainian legislation and is directly applicable by adopting a law on its ratification by the Verkhovna Rada of Ukraine. Thus, it becomes a source of national law in Ukraine.

In accordance with the Law of Ukraine "On International Treaties of Ukraine", international treaties concerning the rights, freedoms and obligations of a person and a citizen are subject to ratification (Article 9.2.b).

Pursuant to the Law of Ukraine "On International Treaties of Ukraine", if the international treaty of Ukraine, which entered into force in the prescribed manner, establishes the rules other than those provided for in the relevant act of the legislation of Ukraine, then the rules of the international treaty shall be applied (Article 19.2). This rule does not apply to the Constitution of Ukraine, since it is not an act of legislation passed by a legislative body or other authorised entity, but is an act of the constituent power, which is created in a special manner.

What mechanism is used to invoke the international treaties in national court decision-making?

As noted above, the current international treaties of Ukraine, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation (Article 9.1 of the Constitution of Ukraine).

The Law of Ukraine "On International Treaties" extends this constitutional provision by stating that the current international treaties of Ukraine, agreed to be binding by the Verkhovna Rada of Ukraine, shall be applied in the manner prescribed for the rules of national law (Article 19.1). That is, the law enforcement bodies of Ukraine are obliged to apply them immediately after the ratified international treaty enters into force. In addition, as noted, in the case where an international treaty of Ukraine, which entered into force in accordance with the established procedure, establishes rules other than those provided for in the

relevant act of the legislation of Ukraine, the former shall apply (Article 19.2 of the Law of Ukraine "On International Treaties of Ukraine").

Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

Yes, it is possible.

For example, under the Law of Ukraine "On the Enforcement of Judgments and the Case Law of the European Court of Human Rights", courts apply the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights as a source of law (Article 17).

In addition, paragraph 4 of the Decree of the Plenum of the Supreme Court of Ukraine No. 9 dated November 1, 1996 "On the application of the Constitution of Ukraine in the administration of justice" provides that, based on the provision of Article 9 of the Constitution of Ukraine, that international treaties which are in force, agreed to be binding by the Verkhovna Rada of Ukraine is part of the national legislation of Ukraine, the court cannot apply the law which regulates the legal relationships under consideration in the manner other than as an international treaty. At the same time, international treaties apply unless they are contrary to the Constitution of Ukraine.

In doing so, the Supreme Specialised Court of Ukraine for Civil and Criminal Cases, in paragraph 14 of the Plenum Resolution on Civil and Criminal Cases No. 13 dated December 19, 2014, "On the application of the international treaties of Ukraine by the courts in the administration of justice", determines that the courts in the administration of justice may apply the rules of international treaties directly as part of the legislation of Ukraine, if the implementation of appropriate measures falls within the competence of the court or if they are formulated in the international treaty as the rules of direct effect. As the norms of direct effect there are subject to application by the courts, in particular, the norms of international treaties of Ukraine, which enshrine human rights and fundamental freedoms.

It should be noted that the Constitutional Court of Ukraine, in accordance with the principle of friendly attitude to international law, in resolving the issues of the protection of human rights and freedoms, takes into account the prescriptions of current international treaties, agreed to be binding by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by international bodies whose jurisdiction is recognised by Ukraine.

In particular, in the Decision No. 9-rp/2012 of April 12, 2012 in the case on the equality of parties in a trial, the Constitutional Court stated that equality and inadmissibility of discrimination against a person were not only the constitutional principles of the national legal system of Ukraine, but also the fundamental values of the world community, which is emphasised in the international legal acts on the protection of human rights and freedoms, in particular in the 1966 International Covenant on Civil and Political Rights (Articles 14, 26), the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms (Article 14), Protocol No. 12 to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1), ratified by Ukraine and in the 1948 Universal Declaration of Human Rights (Articles 1, 2, 7). The same position was expressed

in the Decision No. 7-r/2018 dated October 11, 2018 concerning the right of the Ministry of Finance of Ukraine to receive information containing personal data. In addition, under Article 92 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the Constitutional Court may develop and specify its legal position ... provided there are objective grounds for the need to improve the protection of the constitutional rights and freedoms, taking into account Ukraine's international obligations and subject to justification for such change in a Court's act.

I.II Supranational catalogues of human rights (the Charter)

Since Ukraine is not a Member State of the European Union, the Constitutional Court of Ukraine does not apply the case law of the Court of Justice of the European Union. With regard to the Charter of Fundamental Rights of the European Union, it should be noted that the Court took into account Article 52.1 of the Charter in two cases when adopting its decisions, in particular, the Decision No. 3-rp/2015 dated April 8, 2015 on the impossibility of appealing against decisions of a local general court as an administrative court in cases concerning decisions, actions or omissions of the authorities subject to administrative liability and the Decision No. 4-r/2019 dated June 13, 2019 on the prevention of separate appeal against a court ruling on the extension of the period of detention, which was decided during the trial in the court of first instance before adoption of a decision on the merits.

I.III National Catalogues of human

Is your country's catalogue of basic human rights an integral part of the constitution? If so, in what form (special constitutional charter, certain section of the constitution, constituent of constitutional order/constitutional conformation)? What is its structure?

In Ukraine, the catalogue of fundamental human rights is an integral part of the Constitution (the Basic Law of Ukraine). It is envisaged by Chapter II of the Constitution of Ukraine “Human and Citizen's Rights, Freedoms and Duties”, structurally placed after Chapter I, which sets out the principles of the constitutional order of the state. The above emphasises the importance of the institution of human and citizen's rights and freedoms for Ukraine as a law-based state.

Among other, Chapter II of the Constitution sets out a number of principles, based on which, the Constitution regulates human and citizen's rights and freedoms, namely: human freedom and equality in rights (Article 21); inalienability and inviolability of rights and freedoms (Article 21); inexhaustibility of human and citizen's rights and freedoms (Article 22); guarantee of human and citizen's rights and freedoms and impossibility of their abolition (Articles 3, 22); inadmissibility of narrowing the content and scope of human and citizen's rights and freedoms enshrined in the Constitution (Article 22); equality of citizens before the law; prohibition of discrimination (Article 24); inadmissibility of restriction of the constitutional human and citizen's rights and freedoms, except the cases envisaged by the Constitution of Ukraine (Article 64).

The Constitution of Ukraine does not provide for the division of human and citizen's rights and freedoms into specific groups, but a certain textual sequence of their presentation allows to distinguish them. The catalogue itself begins with the determination of natural (fundamental) rights, without the observation of which all other rights lose their meaning, such as the right to life (Article 27), the right to respect of dignity (Article 28), the right to freedom and personal inviolability (Article 29); it further includes the rights aimed at guaranteeing a person the development and the protection of his or her personality, including the protection against interference in his or her personal and family life (Article 32), freedom of thought and speech (Article 34), freedom of personal philosophy and religion (Article 35), to property (Article 41), to work (Article 43), to a sufficient standard of living (Article 48), to education (Article 53), to judicial protection (Article 55), etc.

What is the historical context for the occurrence of your national human rights catalogue? Is your national regulation a continuation of another (historically prior, foreign) legal regulation or is it original?

The Universal Declaration of Human Rights, adopted by the UN General Assembly (of which Ukraine was a member at that moment) on December 10, 1948, formed the basic universal set of human rights that all UN member states should observe and became the basis of national constitutions in this part. The 1978 Constitution of the Ukrainian SSR was not exception. It envisaged, in particular, the right to work, rest, health care, financial support in old age and in cases of illness, total or partial disability, the loss of a breadwinner, etc., with priority given to the socio-economic rights which was conditioned by the form of government.

The development of the catalogue of human rights, which took place during Ukraine's acquisition of the state independence, was determined by the tendencies of the expansion of the catalogue of rights and freedoms enshrined at the level of the Basic Law; the revision of the traditional constitutional rights, freedoms and obligations; the priority of civil and political rights and freedoms; the focus on international human rights standards; the strengthening of the constitutional guarantees of rights and freedoms, first of all, civil and political etc.

The 1996 Constitution of Ukraine fully implemented the provisions of the Universal Declaration of Human Rights, the International Covenants on Civil and Political and on Economic, Social and Cultural Human Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and others.

Sometimes one may trace textual identity of the articles of the Constitution with the corresponding articles of the international legal acts.

Some constitutional provisions on human rights (the so-called "fourth generation" rights) have no analogues in basic international human rights acts (such as the right to a safe and healthy environment, the right to objective environmental information provided for in Article 50 of the Constitution of Ukraine). In particular, this can be explained by the fact that on the territory of Ukraine there was a catastrophe of the planetary scale – the accident at the Chornobyl nuclear power station.

Therefore, the formation of the national human rights catalogue was greatly influenced by the provisions of the international legal acts, and to a certain extent by

the norms of the Constitution of the USSR of 1978 (mainly concerning social rights), as well as, as stated in the preamble to the Constitution of Ukraine of 1996, the centuries-old history of the Ukrainian state formation and realisation by the Ukrainian nation, all Ukrainian people of the right to self-determination.

What changes have you made to your human rights catalogue? Is it currently being reformed? Is it complemented by new rights?

Basically, the catalogue is stable, but sometimes changes occur. For instance, the Law of Ukraine “On Amendments to the Constitution of Ukraine (on Justice)” of June 2, 2016 No. 1401-VIII (hereinafter – the Law No. 1401) amended Article 55 of the Constitution of Ukraine: *it was supplemented by a new paragraph, according to which everyone is guaranteed the right to file a constitutional complaint with the Constitutional Court of Ukraine on the grounds established in Constitution and in the manner prescribed by law.* The introduction of the institute of constitutional complaint has extended the constitutional right to judicial protection.

Currently, draft laws aimed at amending the Constitution of Ukraine are registered at the Court. Amendments are proposed to articles, which are not included in Chapter II of the Constitution of Ukraine, but still relate to human and citizen’s rights, in particular as regards the granting of the right of legislative initiative to the people and the abolition of the advocate’s monopoly.

Is there a constitutional procedure that determines the conditions for amending or supplementing the human rights catalogue?

The Constitution of Ukraine provides for procedures aimed at ensuring the stability of the available catalogue of rights. Any amendments should not provide for the abolition or restriction of human and citizen’s rights and freedoms, or if they are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine and occur in conditions of martial law or a state of emergency (Article 157 of the Basic Law). The draft laws on introducing amendments to the Constitution of Ukraine are considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine on the conformity of the draft law with the requirements of the constitutional provisions, which contain the aforementioned reservations regarding the possibility of amending and adhering to the procedure of introducing the respective draft law (Articles 157, 158 of the Basic Law).

I.IV. The mutual relationship between different catalogues of human rights

Can you give examples from the case law of your court related to the use of any of the international catalogues?

As noted above, in its decisions the Constitutional Court of Ukraine takes into account the prescriptions of the current international treaties, agreed to be binding by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by international bodies recognised by Ukraine.

For example, in the Decision in the case on appeals of persons declared as incapacitated by the court, No. 8-r/2018 dated October 11, 2018, the Constitutional Court of Ukraine, in formulating its own legal positions, referred to the provisions of Articles 1, 2, 7, Article 29.2 of the 1948 Universal Declaration of Human Rights, Article 4 of the 1966 International Covenant on Economic, Social and Cultural Rights, Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Judgments of the European Court of Human Rights "C.B. v. Romania" dated 20 April 2010, application No. 21207/03; "Parascineti v. Romania"; dated 13 December 2012, application No. 32060/05; "B. v. Romania (no. 2)" dated 19 February 2013, application No. 1285/03; "Stanev v. Bulgaria" dated 17 January 2012 No. 36760/06, "Nataliya Mikhaylenko v. Ukraine" dated 30 May 2013, application No. 49069/11, Article 1.2, and Article 12.4 of the 2006 Convention on the Rights of Persons with Disabilities, Principles 2, 3, 5, Principles 3, 21 of the General Assembly of the United Nations' Principles on the protection of persons with mental illness and the improvement of psychiatric care No. 46/119 dated February 18, 1992, Principle 2.2, Principle 19.1 of the Committee of Ministers of Council of Europe Recommendation No. R (99)4 on principles relating to the legal protection of disabled adults dated 23 February 1999.

There are many examples of such application by the Court of international and supranational law.

Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?

The Constitutional Court of Ukraine has not not considered the relationship / hierarchy / competition of human rights catalogues.

Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject of compliance with Article 51 (1), i.e. its application is not discretionary)

Such procedure does not exist.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

What is the original wording of the provision protecting this right in your national catalogue?

According to Article 27 of the Constitution of Ukraine:

"Every person has the inalienable right to life.

No one shall be arbitrarily deprived of life. The duty of the State is to protect human life.

Everyone has the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments".

In addition, the general constitutional principles include the provision under which the human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value (Article 3.1).

Is it possible to restrict the right? If so, how and under what conditions?

The constitutional human and citizen's rights and freedoms may not be restricted except in cases provided for in the Constitution of Ukraine (Article 64.1 of the Constitution of Ukraine). Based on the analysis of the constitutional norms, the Court has determined that the constitutional stipulation of the inalienable right to life of every person, as well as of all other human and citizen's rights and freedoms in Ukraine, is based on the following principles: exceptions regarding human and citizen's rights and freedoms are established by the Constitution of Ukraine, not by laws or other normative acts (Decision No. 11-rp/1999 dated December 29, 1999).

It is worth noting that the right to life belongs to the list of those rights and freedoms which cannot be restricted, in particular in conditions of martial law or state of emergency (Article 64.2 of the Constitution of Ukraine).

In the Court's conviction, each person's inalienable right to life is inextricably combined with his or her right to human dignity and, as the fundamental human rights, they make possible the implementation of all other human and citizen's rights and freedoms and can neither be restricted nor abrogated (Decision No. 11-rp/1999 dated December 29, 1999).

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In the aspect of the protection of the right to life the Court Decision No. 11-rp/1999 dated December 29, 1999 in the case on death penalty, which declared unconstitutional certain provisions of the Criminal Code of Ukraine, providing for the death penalty as a type of punishment is extremely important. As stated in this Decision, the key point in recognising the human right to life under the Constitution of Ukraine is the provision according to which this right is inalienable (Article 27.1), inalienable and inviolable (Article 21), and the right to life belongs to a person from birth and is protected by the state.

Applying the systematic analysis of the constitutional provisions (Articles 1, 3, 8.2, 22.2, 22.3, 27, 28, 55, 64.1, 157.1), the Court reached, in particular, the following conclusions:

- deprivation of a person's life by the state as a result of the use of the death penalty as a type of punishment, even within the provisions of the law, is the abrogation of the inalienable human right to life that does not comply with the Constitution of Ukraine;

- the Constitution of Ukraine does not contain any provisions on the possibility of applying the death penalty as an exception to the provisions of Article 27.1 of the Constitution of Ukraine, thus, the death penalty as a form of punishment provided for in the relevant provisions of the Criminal Code of Ukraine cannot be

considered an exception to the inalienable right to life of every person enshrined in the Constitution of Ukraine;

- it is necessary to take into account the possibility of judicial error and the inconsistency between the death penalty and the purposes of punishment, the death penalty as a form of punishment should be considered as one that is not consistent with the provisions of Articles 1, 3 of the Constitution of Ukraine;

- the inalienable right of every person to life is inextricably combined with his/her right to human dignity, "as fundamental human rights they determine the possibility to enjoy all other human and citizen's rights and freedoms and can neither be restricted nor abrogated".

Summing up, the Court emphasised that "the interpretation of the provisions of Articles 27.1 and 27.2 of the Constitution of Ukraine in the context of all other provisions of the Constitution of Ukraine as a single coherent document gives grounds to claim that they do not accept the death penalty as a type of punishment".

In substantiating this decision, the Court also relied on Article 3 of the 1950 Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention") and Article 6 (1) of the 1966 International Covenant on Civil and Political Rights.

19 years later, the Court has formulated legal positions on the protection of the right to life of persons in detention under the complete control of the state (Decision No. 3-r/2018 dated April 24, 2018), in particular:

- Articles 27, 28 of the Constitution of Ukraine have institutionalised not only the negative duty of the state to refrain from acts that would infringe on human rights for life and respect for dignity, but also the positive duty of the state, which is, in particular, to ensure the proper system for national protection of the constitutional human rights by developing appropriate regulatory framework; implementation of an effective system of the protection of human life, health and dignity; creating conditions for a person to exercise his fundamental rights and freedoms; guaranteeing the procedure for compensation for damage caused by violations of the constitutional human rights; ensuring the inevitability of responsibility for violations of the constitutional human rights;

- the state's positive obligation to implement a proper system of protection of life, health and human dignity provides for the effective investigation of incidents of facts of deprivation of life and ill-treatment, including persons in detention under the complete control of the state;

- on the basis of Articles 27.1, 27.2, 28.1, and 28.2 of the Constitution of Ukraine, in a systematic connection with its Article 3, the state must introduce legislation to ensure effective investigation into allegations, reports of violations of the constitutional human rights to life and respect to his/her dignity in places of deprivation of liberty by a competent state body (its officials), which is not in an institutional or hierarchical dependence on the state body (its officials) to which the system of places of imprisonment is subordinated and which is responsible for its functioning.

In substantiating this decision, the Court took into account the prescriptions of the applicable international treaties, the consent to which had been given by the Verkhovna Rada of Ukraine (Articles 1-3 of the Convention), and the practice of interpreting and applying these treaties by the international bodies recognised by

Ukraine (including the ECHR case-law, and namely: paragraph 115 of the Judgement in the case of Kats and Others v. Ukraine dated 18 December 2008, paragraph 187 of the Judgement in the case of Salakhov and Islyamova v. Ukraine dated 14 March 2013, paragraph 42 of the Judgement in the case of Mikhalkova and Others v. Ukraine dated 13 January 2011, paragraph 276 of the Judgement in the case of Davydov and Others v. Ukraine dated 1 July 2010, paragraph 155 of the Judgement in the case of Kucheruk v. Ukraine dated 6 September 2007, paragraph 64 of the Judgement in the case of Yaremenko v. Ukraine dated 12 June 2008, paragraph 66 of the Judgement in the case Lopatin and Medvedskiy v. Ukraine dated 20 May 2010, paragraph 106 of the Judgement in the case Teslenko v. Ukraine dated 20 December 2011, paragraph 55 of the Judgement in the case Aleksakhin v. Ukraine dated 19 July 2012, paragraph 55 of the Judgment in the case Belousov v. Ukraine dated 7 November 2013, paragraph 260 of the Judgement in the case Karabet and Others v. Ukraine dated 17 January 2013).

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

In adoption of the Decision No. 3-r/2018 dated April 24, 2018 (see example above), the Court was guided by the principle of friendly treatment of international law (taking into account the prescriptions of applicable international treaties, the consent to which was granted by the Verkhovna Rada of Ukraine, and the practice of interpretation and application of these treaties by the international bodies recognised by Ukraine), which was formulated for the first time in the Decision No. 2-rp/2016 dated June 1, 2016. Noting that Articles 27, 28.2 of the Constitution of Ukraine correlate with Articles 2 ("Right to Life"), 3 ("Prohibition of Torture") of the Convention, the Court took into account the practice of interpreting and applying the aforementioned articles of the Convention when deciding on the cases concerning the protection of the right to life. That is, the Court's case law on the right to life is in line with that of the ECHR.

II.II Freedom of expression

What is the original wording of the provision protecting this right in your national catalogue?

The Fundamental Law of Ukraine states that "everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs" (Article 34.1).

Is it possible to restrict the right? If so, how and under what conditions?

According to the content of Article 64.1 of the Constitution of Ukraine, the right to freedom of thought may be restricted only in cases envisaged by the Constitution of Ukraine. In particular, as stated in Article 34.3 of the Constitution of Ukraine, the exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the disclosure of information received confidentially, or supporting the authority and impartiality of justice.

According to the content of Article 64.2 of the Constitution of Ukraine, under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect of these restrictions.

Let us also consider the generalisation of the Court's legal positions regarding the restriction of any constitutional rights and freedoms (including the right to freedom of thought):

“Narrowing the content and scope of the existing constitutional rights and freedoms is their limitation. The Verkhovna Rada of Ukraine is empowered to adopt laws establishing restrictions according to the following criteria: "restrictions on the implementation of the constitutional rights and freedoms cannot be arbitrary and unfair; they have to be set exclusively by the Constitution and law of Ukraine, pursue the legitimate aim, be caused by public necessity of the achievement of such aim, be proportional and justified, in the case of restriction of the constitutional right or freedom, the legislator is obliged to introduce such legal regulation which will give a possibility to optimally achieve a legitimate aim with minimal interference with the implementation of this right or freedom and not to violate the essential content of the law "(Decision № 5-r/2018 dated May 22, 2018).

Therefore, taking into account the Court's legal positions, restriction (narrowing the content and scope) of the right to freedom of thought may be established solely by the Constitution and laws of Ukraine, with observation of the above criteria, and to the extent that the essential content of the right to freedom of thought is not violated.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The content of this constitutional right has not been the subject of review by the Court.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The lack of relevant case law of the Court precludes such a comparison.

II.III Right to privacy/right to respect for private life/right to private life

What is the original wording of the provision protecting this right in your national catalogue?

The Fundamental Law of Ukraine states that "no one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine" (Article 32.1).

In the aspect of this right, there should be constitutionally protected confidential information about a person, the right to get acquainted with the information about himself/herself, the right to refute incorrect information about himself/herself (paragraphs two - four of the same article, respectively):

"The collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases

determined by law, and only in the interests of national security, economic welfare and human rights.

Every citizen has the right to examine information about himself or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions and organisations.

Everyone is guaranteed judicial protection of the right to refute incorrect information about himself or herself and members of his or her family, and of the right to demand that any type of information be expunged, and also the right to compensation for material and moral damages inflicted by the collection, storage, use and dissemination of such incorrect information".

Is it possible to restrict the right? If so, how and under what conditions?

According to the content of Articles 32.1, 64.1 of the Constitution of Ukraine, the right to privacy may be restricted only in cases provided for by the Constitution of Ukraine. In particular, pursuant to the content of Article 32.2 the collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare and human rights.

According to the content of Article 64.2 of the Constitution of Ukraine under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect of these restrictions.

As the Court noted, "the state may interfere in the personal life of a person in the interests of national security, public security or the economic well-being of the country to prevent disturbance or crime, to protect the health or morals, rights and freedoms of others" (Decision No. 5-r (I)/2019 dated July 12, 2019).

Similarly to the answers to question II of Chapter II of this Questionnaire, one should also refer to the Court's generalised legal positions regarding the restriction of any constitutional rights and freedoms (including the right to private life), based on which the restrictions (narrowing the content and scope) of the right to personal life may be established exclusively by the Constitution and laws of Ukraine, subject to the criteria specified by the Court and to the extent that the essential content of the right to private life is not violated.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Court, while giving an official interpretation of the provisions of Article 32.1, Article 32.2 of the Constitution of Ukraine, stated that "the private life of an individual is his/her conduct in the sphere of personal, family, domestic, intimate, social, professional, business and other relations outside the public activity, in particular, when a person performs functions of the state or local self-government". The Court proceeded, in particular, from the fact that it is impossible to determine absolutely all kinds of behaviour of an individual in the spheres of private and family life, since personal and family rights are part of natural human rights, which are not exhaustive and are realised in various and dynamic relations of property and non-property character, relations, phenomena, events. It was emphasised that the right to

privacy and family life is a fundamental value necessary for the full prosperity of a person in a democratic society and is seen as an individual's right to autonomous existence regardless of the state, local authorities, legal entities and individuals (Decision No. 2-rp/2012 dated January 20, 2012). At the same time, the Court noted that the constitutional and legislative regulation of the right to non-interference with private and family life is consistent with the international legal acts. In particular, the provisions of Article 12 of the 1948 Universal Declaration of Human Rights, Article 8 of the Convention, Article 17 (1), of the 1966 International Covenant on Civil and Political Rights, were taken into account.

Given the systematic analysis of the provisions of Articles 24.1, 24.2, 32.1 of the Constitution of Ukraine, the laws of Ukraine, the legal positions of the Court, with account of the provisions of paragraph 6 of the Resolution of Parliamentary Assembly of the Council of Europe No. 1165 (1998) dated December 25, 2008, that "information about a person's personal and family life (personal data about him/her) is any information or a collection of information about an individual that has been identified or can be specifically identified, namely: nationality, education, marital status, religious and beliefs, state of health, financial situation, address, date and place of birth, place of residence and stay, etc., data on personal property and non-property relations of this person with other persons, including family members, as well as information about events and phenomena that have occurred or are occurring in the household, intimate, comradely, professional, business and other spheres of a person's life, with the exception of data on the exercise of authority by a person holding a position related to the exercise of the functions of the state or body of local self-government" (Decision № 2-rp/2012 dated January 20, 2012).

In addressing the issue of collection, storage, use and dissemination of confidential information about a person, in the same Decision the Court referred to the compatibility of the relevant national constitutional and legislative provisions with the provisions of Article 19.2 of the 1966 International Covenant on Civil and Political Rights, Article 29.2 of the 1948 Universal Declaration of Human Rights, and also referred to Article 8 of the Convention, paragraphs 11, 12 of Council of Europe Parliamentary Assembly Resolution 1165 (right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value; the protection an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media and came to the conclusion that:

- the provisions of Article 32.2 of the Fundamental Law of Ukraine provide for exhaustive grounds for possible legitimate interference with the personal and family life of a person (including those who holds a position related to the functions of the state or local self-government bodies and members of his/her family). Such grounds are: the consent of a person to collection, storage, use and dissemination of confidential information about a person as well as in case of absence of such consent without his or her consent, cases determined by law, and only in the interests of national security, economic welfare and human rights;

- the collection, storage, use and dissemination by the state, local self-government bodies, legal or natural persons of confidential information about a person without his/her consent is an interference with his/her personal and family life,

which is allowed only in the cases specified by law and only in the interests of national security, economic welfare and human rights.

In another Decision, the Court added that interference with the person's constitutional right to privacy and family life "would be considered legitimate if there were grounds in national law, and provided that such a law would be consistent with the rule of law enshrined in Article 8.1 of the Constitution of Ukraine". In its turn, "the constitutional principle of the rule of law requires that there be a legislative stipulation of a mechanism to prevent arbitrary interference by public authorities in exercising their discretionary powers in the rights and freedoms of a person" (Decision No. 7-r/2018 dated October 11, 2018).

Herewith, the Court: drew attention to paragraphs 41, 52 of the Report on the Rule of Law, approved by the European Commission for Democracy through Law at its 86th plenary session (Venice, March 25–26, 2011) (CDL-AD (2011) 003rev); noted that it consistently adheres to its previous positions as to taking into account the prescriptions of current international treaties, agreed to be binding by the Verkhovna Rada of Ukraine, and the practices of interpretation and application of these treaties by international bodies recognised by Ukraine; acknowledged that Articles 32.1, 32.2 of the Constitution of Ukraine are in conjunction with Article 8 of the Convention ("Right to respect for private and family life"), and therefore when deciding on the case the Court takes into account the practice of interpreting and applying the specified Article of the ECHR Convention (*Zaichenko v. Ukraine* (no. 2) dated 26 February 2015, application No. 45797/09; *Panteleyenkov v. Ukraine* dated 29 June 2006, application No. 11901/02; *Surikov v. Ukraine* dated 26 January 2017, application No. 42788/06; *Shalimov v. Ukraine* dated 4 March 2010, application No. 20808/02; *Kotiy v. Ukraine* dated 5 March 2015, application No. 28718/09; *Zosymov v. Ukraine* dated 7 July 2016, application No. 4322/06).

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As noted above, the Court resolved the issue of the right to privacy in the light of the practice of interpreting and applying the ECHR, Article 8 of the Convention ("Right to respect for privacy and family life").

II.IV Freedom of religion

What is the original wording of the provision protecting this right in your national catalogue?

According to the Constitution of Ukraine, Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and unimpededly religious rites and ceremonial rituals, and to conduct religious activity (Article 35.1).

The content of this constitutional right is also revealed in paragraphs three, four of this article:

"The church and religious organisations in Ukraine are separated from the State, and the school – from the church. No religion shall be recognised by the State as mandatory.

No one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the event that the performance of

military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service."

Is it possible to restrict the right? If so, how and under what conditions?

The right to freedom of religion, within the meaning of Article 64.1 of the Constitution of Ukraine, may be restricted only in cases provided for by the Constitution of Ukraine. In particular, the exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other persons (Article 35.2 of the Constitution of Ukraine).

According to the content of the second paragraph of Article 64 of the Constitution of Ukraine, under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect of these restrictions.

Given the Court's generalised legal positions, which were addressed in the answers to questions II, III of Chapter II of this Questionnaire, the restriction (narrowing the content and scope) of the right to freedom of religion may be established exclusively by the Constitution and laws of Ukraine, subject to the criteria set by the Court and to the extent so that the essential content of the right to freedom of religion is not violated.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

Some aspects of the implementation of the right to freedom of religion were considered by the Court in its Decision on advance notification of public services, religious rites, ceremonies and processions No. 6-rp/2016 dated September 8, 2016. The Court stated that the right to freedom of thought and religion may be exercised alone or collectively, in a private or public place, and its exercise, in particular in a public place, related to the exercise of the right to assemble peacefully, without arms and under the provisions of Article 39 of the Constitution of Ukraine to hold meetings, rallies, processions and demonstrations, etc.

The Court took into account the ECHR's approach whereby religious gatherings are a type of peaceful assembly based on:

- its own legal positions on the principle of friendly treatment of international law;
- Guidelines on the Freedom of Peaceful Assembly (2nd Edition) prepared by the Organization for Security and Co-operation in Europe / Bureau for Democratic Institutions and Human Rights and the European Commission for Democracy through Law (Venice Commission) (point A, section 1));
- ECHR case law on Articles 9 and 11 of the Convention (paragraph 112 of the Judgment in the case *St. Michael's Parish v. Ukraine* dated 14 June 2007, paragraphs 15, 25 of the Judgment in the case *Barankevich v. Russia* dated 26 July 2007).

On the basis of a systematic analysis of the rules of the Fundamental Law of Ukraine, the Court concluded that the right to freedom of expression and religion may be exercised, in particular in the form of worship, religious ceremonies, ceremonies and processions. If such events are public and peaceful in nature, they should be subject to the requirements of Article 39 of the Constitution of Ukraine, including early notification to the executive or local self-government bodies of their conduct.

Specifying the conditions for holding a peaceful assembly of a religious nature in a public place, the Court also indicated restrictions on the exercise of religious activities: “For the protection of human and citizen's rights and freedoms, to ensure the normal functioning of a democratic society, state authorities and local self-government bodies, the laws of Ukraine may establish appropriate restrictions on the implementation of religious activities, including in a public place. In the event of a peaceful assembly of a religious nature (worship, religious ceremony, procession, etc.) in its public place, its organisers and participants may be subject to the restrictions specified in Article 39.2 of the Constitution of Ukraine, that is, the court in accordance with the law may establish restrictions on the exercise of the right to freedom of worldview and religion of these persons in a public place in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons”.

The Court found the impossibility to regulate by law a permitting procedure to conduct peaceful religious meetings, and emphasised that in a democratic, rule-of-law state a different procedure for holding peaceful meetings could not be established depending on their organisers and participants, purpose and place, form, etc.

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As noted, the Court resolved the issue of the right to freedom of religion in the light of the practice of interpreting and applying the ECHR, Articles 9, 11 of the Convention (Freedom of Thought, Conscience and Religion, Freedom of Assembly and Association).

II.V Prohibition of discrimination

What is the original wording of the provision protecting this right in your national catalogue?

Article 24 of the Fundamental Law of Ukraine establishes:

“Citizens have equal constitutional rights and freedoms and are equal before the law.

There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

Equality of the rights of women and men is ensured: by providing women with opportunities equal to those of men, in public and political, and cultural activity, in obtaining education and in professional training, in work and its remuneration; by special measures for the protection of work and health of women; by establishing

pension privileges, by creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, granting paid leaves and other privileges to pregnant women and mothers inclusive."

Is it possible to restrict the right? If so, how and under what conditions?

The constitutional human and citizen's rights and freedoms shall not be restricted, except in cases envisaged by the Constitution of Ukraine (Article 64.1 of the Constitution of Ukraine). According to the content of Article 64.2 of the Constitution of Ukraine, equality of constitutional rights and freedoms of citizens, their equality before the law belong to the list of those rights and freedoms that cannot be restricted, in particular in conditions of martial law or state of emergency.

However, as the Court noted, equality of citizens before the law is not absolute (Decision No. 8-rp/2007 dated October 16, 2007). Therefore, it is necessary to take into account the generalised legal positions of the Court according to which restrictions (narrowing the content and scope) of the constitutional rights and freedoms (in particular, the principle of equality) can be established exclusively by the Constitution and laws of Ukraine, with the observance of the criteria defined by the Court and to the extent that it does not violate the essential content of such right (equality), as already mentioned in the answers to questions II - IV of Chapter II of this Questionnaire.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In its case law, the Court has repeatedly provided an understanding of the principle of equality enshrined in Article 24 of the Constitution of Ukraine and has shaped the legal positions that the equality of all persons in their rights and freedoms guaranteed by the Constitution of Ukraine means the necessity to ensure them with equal legal opportunities to exercise equal in substance and scope (both of material and procedural nature) of rights and freedoms and does not exclude the possibility of the legislator to establish certain differences in the scope of social security issues when regulating such security issues (Decisions No. 9-rp/2012 dated April 12, 2012, No. 1-r (II)/2019 dated April 25, 2019, No. 5-r(I)/2019 dated July 12, 2019).

As noted, equality and inadmissibility of discrimination against a person are the constitutional principles of the national legal system of Ukraine, as well as fundamental values of the world community, as emphasised in the international legal acts on the protection of human and citizen's rights and freedoms, in particular in the 1966 International Covenant on Civil and Political Rights (Article 26), the Convention (Article 14), Protocol No. 12 thereto (Article 1) and the 1948 Universal Declaration of Human Rights (Articles 1, 2, 7). In addition, the ECHR pointed out that the difference in attitude is discriminatory when there is no objective and justified justification (§ 51 of Judgement in the case *Stec and Others v. The United Kingdom* dated July 6, 2005).

In its turn, equality of citizens before the law was defined by the Court as the obligatory nature of a particular law to all, with all the differences in the rights or

obligations, privileges or restrictions set out in that law; however, any differences in the privileges or restrictions on different categories of individuals established by law cannot be linked to the features provided for in Article 24.2 of the Constitution of Ukraine. The Court emphasised that this principle defines the general rule of inadmissibility on the grounds of social or personal privileges or restrictions and is not absolute (Decision No. 8-rp/2007 dated October 8, 2007).

The Court's established legal position is that the equality of rights and freedoms of citizens and their equality before the law guaranteed by Article 24.1 of the Constitution of Ukraine, as well as the inadmissibility of privileges or restrictions on the grounds specified in Article 24.2, do not prevent establishing differences in the legal regulation of labour for persons belonging to different categories as to the conditions and nature of activity, including to establish certain qualification requirements to occupy these positions (Decision No. 5-rp/2000 dated April 18, 2000), to introduce special rules regarding the grounds and conditions to hold specific positions, if required by the nature of the professional activity (Decision No. 14-rp/2004 dated July 7, 2004), to set age restrictions (Decision No. 8-rp/2007 dated October 16, 2007).

At the same time, in particular, in the case on the boundary age for tenure in civil service and service in bodies of local self-government (Decision No. 8-rp/2007 dated October 8, 2007), the Court proceeded from the provisions of the Constitution and laws of Ukraine, its own legal positions, international legal acts that allow for the possibility to impose certain age-related restrictions on employment in certain types of employment in national legislation. The Court referred to such international legal instruments as the 1966 International Covenant on Economic, Social and Cultural Rights (Article 4), the 1958 ILO Convention on Discrimination in Occupation and Occupation No. 111 (Article 1.2), the 1980 ILO Recommendation on Elderly Workers No. 162 (Chapter II, Item 5), Council Directive 2000/78/EU dated 27 November 2000 (Article 6).

With regard to the purpose of identifying certain differences (requirements) in the legal status of employees, it was stated that it should be substantial, and the differences (requirements) pursuing such an objective should be consistent with the constitutional provisions, be objectively justified, reasonable and fair; otherwise, imposing restrictions on employment would constitute discrimination (Decision No. 14-rp/2004 dated July 7, 2004). In doing so, the Court emphasised that the interpretation of the provisions of Article 43 of the Constitution of Ukraine is consistent with the international legal instruments, in particular Article 4 of the 1966 International Covenant on Economic, Social and Cultural Rights (a State may only impose such restrictions on these rights as are provided by law and only insofar as it is compatible with the nature of the said rights and solely for the purpose of promoting the common welfare of a democratic society).

The Court considers that a violation of the equality of the constitutional rights and freedoms means that a person or a group of persons on the grounds defined in Article 24 of the Constitution of Ukraine, which were, which are and which may be valid or assumed, receive privileges or are subject to restrictions as to the recognition, exercise or enjoyment of rights and freedom in any form, except where such a restriction has a legitimate, objectively justified purpose, the means of which are appropriate and necessary (Decision No 5-r (I)/2019, July 12, 2019).

In the Court's opinion, actions that do not limit the rights and freedoms of others and do not create obstacles to their implementation, and also do not provide unreasonable advantages on certain grounds to persons against whom positive action is applied, are not considered discriminatory, namely: special protection from state; implementation of measures aimed at maintaining identity, if such measures are necessary; the provision of benefits and compensation in cases provided by law; establishment of state social guarantees; enshrining in the law of special requirements for the implementation of certain rights (Decision No. 2-r /2019 of June 4, 2019).

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As noted, the Court considered and decided on the principle of equality and non-discrimination in the light of the practice of interpreting and applying the ECHR to the relevant articles of the Convention.

II. VI Right to liberty

What is the original wording of the provision protecting this right in your national catalogue?

The Fundamental Law of Ukraine states that every person has the right to freedom and personal inviolability (Article 29.1).

Is it possible to restrict the right? If so, how and under what conditions?

Pursuant to Article 64 of the Constitution of Ukraine, Constitutional human and citizen's rights and freedoms shall not be restricted, except in cases envisaged by the Constitution of Ukraine (paragraph one); under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect of these restrictions (paragraph two).

Yet, as stated by the Court, the right to liberty and security of person is not absolute and may be restricted, but such restriction must be exercised in accordance with the constitutional guarantees of the protection of the rights and freedoms, the principles of fairness, equity and proportionality (proportionality), ensuring a fair balance of interests of the individual and society, on the basis and in accordance with the procedure established by the laws of Ukraine, taking into account acts of international law, positions of the ECHR, following a justified court decision, adopted during a fair trial (Decisions № 10-rp/2011 dated October 11, 2011, № 1-r/2017 dated November 23, № 4-r/2019 dated June 13, 2019).

Taking into account the Court's generalised legal positions, which were discussed in the answers to questions II - V of Chapter II of this Questionnaire, restrictions (narrowing the content and scope) of a person's freedom to liberty may be established exclusively by the Constitution and laws of Ukraine, subject to the criteria set by the Court and to the limit, so that the essential content of a person's right to liberty is not violated.

Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Court provided an understanding of the content of this right in its Decision No. 2-rp/2016 dated June 2, 2016, stating that "among the fundamental values of an effective constitutional democracy is freedom, which a person has as a prerequisite for its development and socialisation"; "The right to freedom is an integral and inalienable constitutional human right and provides for a possibility to select one's own behaviour with the purpose of free and comprehensive development, act independently according to their own decisions and plans, prioritise, do whatever is not prohibited by law, freely and at one's own discretion move throughout the state, choose a place of residence etc"; "The right to freedom means that a person is free in his or her activity from outside interference, except for restrictions established by the Constitution and laws".

In the Court's view, the detention, arrest and holding in custody as defined in Article 29 of the Constitution of Ukraine implies as coercive measures restricting the right to freedom and security of person and may be applied on the grounds and in the manner prescribed by law (Decisions No. 17-rp/2010 dated June 29, 2010, № 10-rp/2011 dated October 11, 2011).

In doing so, the Court took into account (Decision No. 17-rp/2010 dated June 29, 2010;) Articles 3, 9 of the 1948 Universal Declaration of Human Rights, Article 9.1 of the 1966 International Covenant on Civil and Political Rights, Article 5.1 of the Convention, and the ECHR Judgments in the cases of Soldatenko v. Ukraine dated 23 October 2008, Eloev v. Ukraine dated 6 November 2008, Mykola Kucherenko v. Ukraine dated 19 February 2009.

Administrative detention was regarded by the Court as a short-term deprivation of freedom (Decision No. 10-rp/2011 dated October 10, 2011), and detention as the most severe preventive measure related to the restriction of a person's constitutional right to freedom, which consists in the compulsory isolation of a suspect accused by placing him/her in a detention facility for a certain term with submission to the regime of that institution (Decisions No. 1-r/2017 dated November 23, 2017, No. 4-r/2019 dated June 13, 2019).

The Court connected granting the person the right to appeal a court decision extending the period of detention with the protection of the human right to freedom. So, in the Court's opinion, "the impossibility of a timely appeal review of the decision of the court of the first instance on the extension of the preventive measure in the form of detention precludes the effective and efficient (effective) verification of the lawfulness of the restriction of the constitutional human right to freedom at the trial stage", while "granting a person the right to appeal a judicial decision to extend the period of detention during judicial proceedings is a manifestation of a guarantee of execution by the state of the international obligations to ensure conditions for each suspect, accused (defendant) to provide an effective legal remedy for his/her constitutional rights and freedoms in accordance with the international standards, the necessary guarantee of the restoration of violated human rights, freedoms and interests, an additional mechanism for eliminating errors made by the first court instances when considering criminal cases before making a decision on the merits" (Decision No. 4-r/2019 dated June 13, 2019).

Considering the case, the Court proceeded from the provisions of the Constitution of Ukraine, its own legal positions, and took into account such international legal acts as the 1948 Universal Declaration of Human Rights (Article 8), the 1966 International Covenant on Civil and Political Rights (Article 14), the Convention (Articles 5, 6), 2000 Charter of Fundamental Rights of the European Union (Article 52.1), Declaration of Fundamental Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985 (paragraph 4), Recommendations of the Committee of Ministers of the Council of Europe on September 27, 2006 № Rec 2006 (para 18, 19), § 49-51 of amicus curiae summary dated March 18, 2019, No. 939/2018 (CDL-AD(2019)001), adopted at the 118th plenary session of the European Commission For Democracy through Law (Venice Commission), as well as the ECHR Judgements in the cases *Delcourt v. Belgium* dated 17 January 1970 (§ 25), *Hoffmann v Germany* dated 11 October 2001 (§ 65), *Ashingdane v. the United Kingdom* dated 28 May 1985 (§ 57), *Krombach v. France* dated 13 February 2001 (§ 96).

The peculiarities of the protection of the constitutional right to freedom of "vulnerable categories of persons", in particular persons with mental disorders, were reflected in the Court's Decision No. 2-rp/2016 dated June 1, 2016, which stated that "although due to health reasons, incapable persons are not able to personally exercise certain constitutional rights and freedoms, including the right to freedom and security of person, they cannot be completely deprived of these rights and freedoms, therefore the state is obliged to create effective legislative mechanisms and guarantees for their maximum realisation".

The Court noted that the hospitalisation of a legally incompetent person in a psychiatric institution should be subject to constitutional guarantees for the protection of human and citizens' rights and freedoms, taking into account international legal standards, legal positions of the Court and exclusively by a court decision in accordance with the requirements of Article 55 of the Fundamental Law of Ukraine. After an independent and impartial consideration of the hospitalisation of a legally incompetent person in a psychiatric institution, the Court must decide on the legality of restricting the constitutional right of such a person to freedom and personal inviolability.

In substantiating the Decision, the Court: proceeded from the provisions of the Constitution and laws of Ukraine, its own legal positions; took into account the prescriptions of the applicable international treaties, agreed to be binding by the Verkhovna Rada of Ukraine (Article 5.1, 4 of the Convention; Article 12, paragraph 12, of the Convention on the Rights of Persons with Disabilities dated December 13, 2006; principles 16, 17 of the General Assembly Resolution UN Principles on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care dated February 18, 1992 No. 46/119; paragraph 7 of the Council of Europe Parliamentary Assembly Recommendation on Psychiatry and Human Rights dated January 1994; Article 1 of the Committee of Ministers of the Council of Ministers Recommendation regarding the legal protection of persons suffering from mental disorders and patients forcibly dated February 22, 1983 № R (83) 2); took into account the practice of interpreting and applying these treaties by international bodies recognised by Ukraine (since Article 29 of the Constitution of Ukraine corresponds to Article 5 of the Convention, then, in accordance with the principle of friendly

treatment of international law, the practice of interpreting and applying the ECHR of that Article of the Convention should be taken into account in the case), in particular paragraph 30 of the Judgment in the case Mackay v. the United Kingdom dated 3 October 2006, paragraph 39 of the Judgment in the case Winterwerp v. the Netherlands dated 24 October 1979, paragraph 40 of the Judgment in the case Gorshkov v. Ukraine dated 8 November 2005, paragraph 102 of the Judgment in the case Stork v. Germany dated 16 June 2005, paragraph 120 of the Judgment in the case Stanev v. Bulgaria dated 17 January 2012 .

Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

As noted, the Court resolved the issues of the right of a person to freedom in the light of the practice of interpretation and application of the ECHR, Article 5 of the Convention ("Right to freedom and security of person").