

Ukraine

Title: Opinion of the Constitutional Court on the conformity of the Rome Statute with the Constitution of Ukraine, Case N 1-35/2001, 11 July 2001.

Date: 11.07.2001

Source: Unofficial translation by the ICRC.

Summary:

The request for an examination of the Rome Statute's constitutionality was made by the President of Ukraine pursuant to Article 151 of that country's constitution. The President contended that several provisions of the Rome Statute were not in conformity with the Ukrainian Constitution, in particular the provisions concerning the principle of complementarity, the irrelevance of official capacity, the transfer of Ukrainian citizens to the Court and the enforcement of sentences in third States. In contrast, the Ministry of Foreign Affairs argued that the Statute did not contradict the Constitution.

The Court concluded that most provisions of the Rome Statute were in conformity with the Constitution, except for paragraph 10 of the Preamble and Article 1, which states that the jurisdiction of the ICC "shall be complementary to national criminal jurisdictions". Under Article 9 of the Constitution, the conclusion of international treaties not in conformity with the Constitution can take place only after amendment of the Constitution.

Article 124 of the Ukrainian Constitution states that the administration of justice is the exclusive competence of the courts and that judicial functions cannot be delegated to other bodies or officials. The Constitutional Court noted that the jurisdiction of the ICC under the Rome Statute is complementary to national judicial systems. However, under Article 4(2) of the Rome Statute, the ICC may exercise its functions and powers on the territory of any State party, and under Article 17, the ICC may find a case to be admissible if the State is unwilling or unable genuinely to carry out the investigation or prosecution. The Court concluded that jurisdiction supplementary to the national system was not contemplated by the Ukrainian Constitution. Hence, the amendment of the Constitution is required before the Statute can be ratified.

Article 125 of the Ukrainian Constitution prohibits the creation of "extraordinary and special courts". The Court held that, given that the Rome Statute was based on respect for individual rights and freedoms and included mechanisms to ensure impartial justice, the ICC could not be viewed as an "extraordinary or special court", the latter being national courts which replace ordinary courts and which do not apply established legal procedures.

The Court also held that the Rome Statute was not contrary to Article 121 of the Ukrainian Constitution, which entrusts the procuracy with prosecuting cases on behalf of the State, since that provision concerns only the prosecution of cases before the national courts. There was no need for constitutional amendment since the provisions of the Rome Statute on cooperation and assistance could be implemented through ordinary legislation.

The Ukrainian Constitution sets forth immunities from prosecution for the President, members of the Assembly and judges. The Court was of the opinion that Article 27 of the Rome Statute was not contrary to the immunities granted by the Constitution, since the crimes subject to the jurisdiction of the ICC were crimes under international law recognized by customary law or provided for in international treaties binding on Ukraine. The immunities granted by the

Constitution were applicable only before national jurisdictions and did not constitute obstacles to the jurisdiction of the ICC.

Article 25 of the Ukrainian Constitution prohibits the surrender of nationals to another State. The Court noted that international practice distinguished between the extradition of a person to a State and the transfer of a person to an international tribunal. Article 25 prohibits only the surrender of a national to another State and is not applicable to a transfer to an international court, which could not be considered as a foreign court. The aim of the prohibition – the guarantee of a fair and unbiased trial – is met in the case of the ICC by means of the Statute's provisions, which are largely based on international human rights instruments and ensure a fair trial.

Lastly, the Court examined the possibility that Ukrainian citizens serving sentences in another State may enjoy fewer human rights guarantees than those provided by the Ukrainian Constitution. Article 65 of the Ukrainian Constitution states that "constitutional human and citizens' rights and freedoms shall not be restricted, except in cases envisaged by the Constitution of Ukraine." The Court was of the opinion that the risk of the rights and freedoms of Ukrainian citizens serving sentences in another State being more limited than those guaranteed by the Ukrainian Constitution could be diminished by means of a declaration stating Ukraine's willingness to have sentenced Ukrainian citizens serve their sentences in Ukraine. It also noted the criteria to be taken into account by the Court in designating the State of enforcement: the application of widely accepted international treaty standards governing the treatment of prisoners, and the views and the nationality of the sentenced person.

Text:

In the name of Ukraine

Conclusion
of the Constitutional Court of Ukraine
in the case of constitutional submission of President of Ukraine on granting conclusion related to compliance of Constitution of Ukraine to the Rome Statute of the International Criminal court
(case on Rome Statute)

Kyiv

Case N 1-35/2001

11 July 2001

N 3-b/2001

Constitutional Court of Ukraine, consisting of judges of Constitutional Court of Ukraine:

Skomoroha Victor Yegorovich-presiding,

Vozniuk Volodymir Denisovich,

Yevgrafov Pavel Borisovich,

Ivaschenko Volodymir Ivanovich,

Kozubra Mykola Ivanovich- reporting judge,

Kornienko Mykola Ivanovich,

Kostitsky Myhailo Vasiliovich,

Mallinnikova Ludmila Fedorivna,

Nimchenko Vasil Ivanovich,

Rozenko Vitaly Ivanovich,

Selivon Mikola Fedosovich,

Timchenko Ivan Artemovich,

Tohoy Volodimir Pavlovich,

Chubar Ludmila Panteleevna,

Shapoval Volodimir Mykolayovich,

Yatsenko Stanislav Serhiovich,

with participation of representative of subject of law for constitutional submission - President of Ukraine - Nosov Vladislav Vasilovych, Permanent representative of President of Ukraine in Constitutional Court of Ukraine, Yefimenko Leonid Vasilievich, deputy Minister of justice of Ukraine, as well as recruited for consideration of the case representative of the Ministry of foreign affairs of Ukraine Pravednik Andrey Ivanovich, a.i. head of department of international public law of the Legal department,

considered at its plenary meeting the case of constitutional submission of President of Ukraine on granting conclusion related to compliance to Ukraine's Constitution of Rome Statute of the International Criminal court, signed in the name of Ukraine on 20 January 2000, which is submitted to Verhovna Rada of Ukraine to grant consent to be binding.

The reason for consideration of the case, pursuant to article 151 of Constitution of Ukraine, became constitutional submission of President of Ukraine.

The grounds for consideration of the case is the need for conclusion of Constitutional Court of Ukraine subject to compliance of Constitution of Ukraine to international treaties of Ukraine, which are submitted to Verhovna Rada of Ukraine to grant consent to be binding.

On hearing judge-rapporteur Kozubra M.I., as well as explanations of Nosov V.V., Yefimenko L.V., Pravednik A.I. and after examination of materials of the case, Constitutional Court of Ukraine

Held:

1. The subject of law for constitutional submission - President of Ukraine- applied to the Constitutional Court of Ukraine with request to provide conclusion related to compliance of Ukraine's Constitution to the Rome Statute of International criminal court (further - Statute), signed in the name of Ukraine on 20 January 2000, which is subject to submission to Verhovna Rada of Ukraine for granting consent of its binding force.

According to the opinion of President of Ukraine, several articles of the Statute do not comply with the Constitution of Ukraine, particularly:

- article 27, according to it, the regulations of the Statute are applicable equally to all persons, regardless of their official position, and it does not correspond to parts one, three of article 80, part one of article 105, parts one, three of article 126 of Constitution of Ukraine, which guarantee immunity to people's deputies of Ukraine, President of Ukraine and judges for the term of execution of their duties;

- item 1 of article 89, which stipulates transfer of persons to the International criminal court, and item 3 of article 107 related to transfer by the state to execute judgment over the person to the third state for prosecution in court or execution of sentence, as not complying with part two of article 25 of Constitution of Ukraine, pursuant to which a citizen of Ukraine may not be surrendered to other state, including under procedure of criminal proceedings.

Constitution of Ukraine does not envisage also surrender of citizens of Ukraine (as a separate type of extradition) to international organs of criminal jurisdiction;

- paragraph ten of preamble and article 1 do not comply with parts one, three of article 124, part five of article 125 of Constitution of Ukraine, according to which delegation of functions of courts of Ukraine to other organs and establishment of courts, not envisaged by Fundamental Law, are not permitted;

- paragraph 4, item 1 of article 12 related to recognition by the state-participant of Court's jurisdiction to conduct its functions and powers on the territory of any state do not comply with part two of article 5 of Constitution of Ukraine, which does not allow for conduct of authority by people, including judicial one, through international organs;

- item 1 of article 9 related to empowering Assembly of states-participants to establish the Elements of crimes and introduce amendments to them, sub-item "a" of item 1 of article 21, article 51 related to the rules of court judgement and provisions of articles 23, 77 related to determination of punishments do not comply with items 14, 22 of part one of article 92, article 75 of Constitution of Ukraine;

- sub-item "a" of item 1 of article 103 in fact subjects Ukrainian citizens to the action of laws of other state while serving sentence, which deprives them of rights, guaranteed by the Constitution of Ukraine.

It does not comply also with part three of article 63 of Constitution of Ukraine, whereas convicted person enjoys all human and citizen's rights, excluding limitations, stipulated by the law of Ukraine and established by the sentence of Ukraine's court, and part one of article 64 of Ukraine Constitution, which allows for the possibility to limit constitutional human and citizen's rights and freedoms only in cases, stipulated by the Constitution of Ukraine;

- item 4 of article 42, item 2 of article 66, where as the proof of evidence is vested in prosecutor, elected by members of Assembly of states-participants, do not comply with item 1 of part one of article 121 of Constitution of Ukraine, whereas support of persecution in court is vested to prosecutors' office of Ukraine.

In the process of case's consideration at open plenary meeting of Constitutional Court of Ukraine, representatives of the subject of law for constitutional submission supported presented arguments related to disparity of mentioned provisions of the Statute to Constitution of Ukraine.

The representative of the Ministry of foreign affairs of Ukraine, on the contrary, observed, that according to opinion of the Ministry, provisions of the Statute do not contradict Ukraine's Constitution, therefore it can be ratified by Verhovna Rada of Ukraine without introduction of amendments to the Fundamental Law of Ukraine.

2. Considering the Statute for the subject of its compliance to Ukraine's Constitution, Constitutional Court of Ukraine takes into account:

2.1. Pursuant to part first of article 124 of Constitution of Ukraine, justice in Ukraine is conducted exclusively by courts. Constitutional Court of Ukraine and courts of general jurisdiction are part of it (part three of article 124).

The system of courts of general jurisdiction in Ukraine consists of:

Supreme Court of Ukraine -the supreme judicial organ in the system of courts of general jurisdiction, supreme specialized courts, appellate and local courts (parts two, three, four of article 125). Delegation of functions of courts, as well as appropriation of these functions by other organs or officials are not allowed (part one of article 124).

It is prohibited as well to establish emergency and special courts (part five of article 125).

Article 1 of the Statute, referring to the fact, that International criminal court is a permanent organ, empowered to exercise jurisdiction over the persons, responsible for the most serious crimes, which cause anxiety of international community, at the same time stressing, that this Court supplements national organs of criminal justice. Analogous provision is contained also in paragraph ten of the Statute's preamble.

While supplementing the national system of justice, the character of International criminal court is specified in several other articles of the Statute, particularly item 2 of article 4, whereas the Court can conduct its functions and powers on the territory of any participating state, in sub-item "a" of item 1 of article 17, where as the Court accepts for its handling those cases, referred to it not only by application of the participating state, but according to its own initiative, when the state of jurisdiction for the crime-suspect, as stipulated by the Statute, "does not wish nor capable of conducting investigation or institution of criminal proceedings in due course".

It differs significantly International criminal court from international judicial organs, particularly European Court of human rights, whereas the right to petition for protection of their rights and freedoms is stipulated in part four of article 55 of Ukraine's Constitution. Such international judicial organs initiate investigation only following petitions from persons, whereas the person may petition them only after all national remedies for legal protection have been exhausted.

Therefore, differing from international judicial organs, envisaged by part four of article 55 of Ukraine's Constitution, which are supplementary remedies by character for protection of human and citizen's rights and freedoms, International criminal court supplements the system of national jurisdiction.

Possibility of such supplement of judicial system of Ukraine is not envisaged by section VIII "Justice" of Ukraine's Constitution.

It provides grounds to conclude, that paragraph 10 of preamble and article 1 of the Statute do not comply with provisions of part one, three of article 124 of Ukraine's Constitution, therefore adherence of Ukraine to this Statute, pursuant to part two of article 9 of Constitution of Ukraine, is possible only after introduction of corresponding changes to it.

By its character, International Criminal court is an international and legal judicial institution, set up by consent of the states - participants of its founding document - Statute, with its provisions being based on the principle of respect to personal rights and freedoms, specifically establishment of corresponding jurisdictional mechanisms for providing impartial justice.

Therefore International criminal court cannot be referred to extraordinary and special courts, which are not allowed for establishment pursuant to part five of article 125 of Ukraine's Constitution.

Extraordinary and special courts by character of this article, firstly, are not international, but national courts, and secondly, courts, established to substitute ordinary courts, which do not properly adhere to legally established procedures.

Therefore, there are no grounds to consider paragraph ten of preamble and article 1 of the Statute as contradicting to the article 125 of Ukraine's Constitution.

2.2. Pursuant to item 1 of article 27 of the Statute, its provisions are applied equally to all persons irrespective of their official status. Particularly, official status of the head of state or government, member of government or parliament, elected representative or an official of the government does not absolve the person from criminal liability pursuant to the Statute and is not the reason by itself to mitigate the sentence.

Item 2 of article 27 of the Statute states, that immunities and special norms, which may be connected with an official position of a person pursuant to national or international law, should not prevent the Court from exercising its jurisdiction over such a person.

According to opinion of the subject of law for constitutional submission, these provisions of article 27 contradict parts one, three of article 80, part one of article 105 and parts one, three of article 126 of Constitution of Ukraine, which guarantee immunity respectively to people's deputies of Ukraine, President of Ukraine and judges.

Settling this dispute, Constitutional Court of Ukraine takes into consideration the following.

Pursuant to article 18 of Ukraine's Constitution, foreign political activity of Ukraine is based on generally recognized principles and norms of international law.

One of these principles is the principle of diligent performance of international obligations, which aroused in the form of international and legal custom "pacta sunt servanda", just at an early stage of statehood's development. At present it received its reflection in numerous international agreements.

As a generally recognized rule of behaviour of subjects, aforementioned principle has been secured in the UN Charter, whereas preamble stresses decisiveness of UN members "to set up conditions, by which it is possible to maintain justice and respect to obligations, resulting from agreements and other sources of international law".

Establishment of responsibility for committing majority of crimes, stipulated by Rome Statute, is an international and legal obligation of Ukraine, according to other international and legal documents, which entered into force for our state (many of them - long before Ukraine's Constitution entered into force).

Particularly, it is the Convention on prevention of crimes of genocide and persecution for it of 9 December 1948 (entered into force on 15 February 1955); Geneva convention relative to

protection of civilian population at war of 12 August 1949 (entered into force on 3 January 1955); Geneva convention relative to the treatment of prisoners of war of 12 August 1949 (entered into force on 3 January 1955); Convention on protection of cultural values in case of armed conflict of 14 May 1954 (entered into force on 6 July 1957); International convention on prevention of the crime of apartheid and punishment for it of 30 November 1973 (entered into force on 18 July 1976); Convention against tortures and other cruel, inhuman or other disgraceful treatment and punishment of 10 December 1984 (entered into force on June 26, 1987).

In fact, the Statute reflects majority of provisions, which determine crimes, listed in mentioned and other conventions, which Ukraine has joined.

At that, provisions of the Statute, prohibiting the crime of genocide, crimes against humanity, war crimes, the crime of aggression, are considered at present as customary rule of international law, which was repeatedly confirmed by international organs.

Therefore, their character as criminal ones, according to article 18 of Ukraine's Constitution, does not depend on Ukraine's adherence to the Statute and its entry into force.

2.2.1. Provisions of the Statute do not prohibit establishment and do not cancel provisions of Ukraine's Constitution referring to immunity of people's deputies of Ukraine, those of President of Ukraine and judges, and only result from the fact, that immunity of these persons concerns national jurisdiction and may not be an obstacle to exercise jurisdiction by International criminal court related to those of them, who committed crimes, stipulated by the Statute.

It complies completely with international and legal obligations of Ukraine.

Thus, Convention on prevention of the crime of genocide and punishment for it directly envisages, that persons, committing genocide, are subject to punishment regardless of the fact, whether they were responsible by constitution as governor, official or private persons (article IV). Therefore provisions of Constitution of Ukraine related to immunity of mentioned categories of persons should be interpreted in the systematic connection with the provisions of article 18 of Ukraine's Constitution.

2.2.2. Immunity of certain category of official persons - it is not their privilege; it is connected with their performance of important state functions, therefore pursuant to Ukraine's Constitution and international legal obligations of Ukraine it cannot be considered as a guarantee of their impunity. Immunity of people's deputies of Ukraine, President of Ukraine, judges stipulate only specific conditions for instituting criminal proceedings against them.

2.2.3. Persons, enjoying the right for immunity, may be held criminally liable by national law, which complies with international legal obligations of the state, by involving intra-state (national) judicial mechanisms. Pursuant to the complementarity principle, laid down in the foundation of the Statute (article 17), International criminal court does not accept the cases for its consideration, if corresponding person has already been sentenced, following proper legal procedure, by another court (including national court), for actions, prohibited by the Statute (article 20).

Therefore, article 27 of the Statute does not contradict parts one, three of article 80, part one of article 105 and parts one, three of article 126 of Ukraine's Constitution.

2.3. Pursuant to part two of article 25 of Ukraine's Constitution, a citizen of Ukraine may not be surrendered to another state.

Item 1 of article 89 of the Statute stipulates, that International Criminal court may submit its request for arrest and transfer of a person together with corresponding materials to any state, on which territory the person stays, and address this state with a request of cooperation in arrest and transfer. Participating states, according to procedure, stipulated by their national legislation, execute such a request.

The subject of law for constitutional submission considers, that this provision of the Statute contradicts aforementioned provision of article 25 of Ukraine's Constitution.

On his opinion, item 3 of article 107 of the Statute does not comply with it as well, whereas the state- executor of the sentence may, pursuant to its legislation, to surrender or by other means, to transfer a corresponding person into jurisdiction of the state, which addressed it with request to extradite or to transfer this person with the purpose of judicial persecution or execution of sentence.

Analysis of provisions of Ukraine's Constitution, Statute and other materials of the case, as well as familiarization with special literature and international legal practice, provide grounds for Ukraine's Constitutional Court to ascertain:

2.3.1. Terms "transfer" and "surrender" in general understanding of their application, are considered often as synonyms, but in international legal documents and special literature they are understood with different sense of meaning, thus making their legal nature not identical.

Therefore, the international legal documents and special literature consider, that delivery of a person to another equally sovereign state differs in principle from delivery of a person to the Court, established pursuant to international law with participation and agreement of interested states.

If first one by international legal terminology is determined by the term "surrender ", or "extradition" (from lat. ex-from, beyond, and traditio- transfer), then another one by the term "transfer".

The Statute also complies with this international legal practice, pursuant to its article 102 , "the transfer" signifies delivery of a person by a state to the Court, while "surrender "-delivery of a person of one state to another state pursuant to provisions of international agreement, convention or national legislation.

2.3.2. According to part two of article 25 of Ukraine's Constitution, surrender (extradition) of Ukraine's citizens to other state is prohibited. Therefore this prohibition concerns only national, and not international jurisdiction. It aims to guarantee unbiased judicial review and justice and lawfulness of punishment for its citizens.

International criminal court cannot be equated to a foreign court, as it is being established, as stated before, with participation and by agreement of participating states on the basis of international, and not national law.

The aim, explaining prohibition to surrender citizens of one state to another, is reached in International criminal court by applying corresponding provisions of Statute, developed (or agreed) by the participating states. These regulations are based on international pacts of human rights, whereas Ukraine has already agreed to be binding for it.

2.3.3. Therefore constitutional provisions related to prohibition of surrender of the citizens of Ukraine (even in case of wide interpretation of the term "surrender") should not be considered separately from international and legal obligations of Ukraine.

Thus, it is necessary to consider the complementarity principle, stated in the Statute (article 17), which formulates, that if national jurisdiction is involved with reference to persons, who are guilty in committing the most serious international crimes, then International criminal court should not exercise to them its own jurisdiction, therefore, the issue will not arise of their transfer to the International criminal court.

2.4. Pursuant to article 4 of the Statute, International criminal court may exercise its functions and authority on the territory of any participating state and by special agreement - on the territory of any other state. The state, which becomes the participant of the Statute, recognize by it the jurisdiction of the Court with reference to crimes, listed in article 5 of this Statute (item 1 of article 12).

According to opinion of the subject of law for constitutional submission, mentioned provisions of the Statute contradict to part two of article 5 of Ukraine's Constitution.

Pursuant to it, "the people are the bearers of sovereignty and the only source of power in Ukraine. The people exercise power directly and through bodies of state power and bodies of local self-government".

This provision seems as not to allow for the people to exercise its authority, including judicial one thereof, by intermediary of international organs. Thus, constitutional submission considers as doubtful not only separate provisions of the Statute, but performance by International criminal court of its jurisdiction on the territory of Ukraine in general.

As it results from the contents of mentioned and other articles of the Statute, International criminal court exercises its jurisdiction on the territory of those states only, which joined the Statute by ratifying it in stipulated order, i.e. they became participating states of the Statute, or concluded a special agreement on spreading its jurisdiction on its territory.

According to part one of article 9, item 32 of part one of article 85 of Constitution of Ukraine, providing agreement for mandatory application of international agreements, including thereof present Statute, relates to authority of Verhovna Rada of Ukraine-parliament, which through representatives, elected to it-peoples' deputies of Ukraine-represents the will of the people.

International agreements, agreed to be binding by Verhovna Rada of Ukraine, become part of national legislation of Ukraine. Exactly in this way people's sovereignty is exercised concerning extension of jurisdiction of international judicial organs on the territory of Ukraine (with condition, that provisions of their statutes do not contradict Ukraine's Constitution).

Therefore there are no grounds to recognize item 1 of article 89, item 3 of article 107 of the Statute as contradicting the requirements of part two of article 25 of Ukraine's Constitution.

2.5. According to sub-item "a" of item 1 article 21 of the Statute, International criminal court, in addition to Statute, applies "Elements of crimes and its Rules of procedure and evidence". Requirements to these Rules are established in article 51 of the Statute.

Subject of law for constitutional submission considers, that Statute's provisions, listed in mentioned articles, contradict Ukraine's Constitution, as pursuant to item 14 of part one of article 92 of Ukraine's Constitution, judicial system and judicial procedure are determined exclusively by

the laws of Ukraine, adopted by Verhovna Rada of Ukraine, which is the only source of legislative authority in Ukraine (article 75).

Pursuant to part one of article 9 of Ukraine's Constitution, international agreements, agreed to be binding by Verhovna Rada of Ukraine, are part of national legislation of Ukraine. Agreement for an international agreement to be binding (its ratification) is conducted by Verhovna Rada of Ukraine in the form of a law, which, by its legal nature, does not differ from other laws of Ukraine (Decision of Constitutional Court of Ukraine of 12 July 2000 N 9-p ĩ /2000 in the case of constitutional submission of 54 people's deputies of Ukraine related to compliance with Ukraine's Constitution (constitutionality) of Ukraine's Law "On ratification of European Charter of regional languages or minority languages, 1992". (case on ratification of Charter on languages, 1992).

Therefore Ukraine's adherence to the Statute will not contradict to the requirements of article 75 and item 14 of article 92 of Ukraine's Constitution. Changes, made in connection with such adherence, are possible only to Criminal Code and the Code for Criminal procedure of Ukraine.

2.6. Pursuant to item 1 of article 9 of the Statute, Elements of crimes assist the Court to interpret and apply its articles 6,7 and 8 and "are adopted by two third majority vote of Assembly's members of participating states".

According to the opinion of the subject of law for constitutional submission, mentioned provisions do not comply with item 22 of part one of article 92 of Ukraine's Constitution, whereas acts, which are crimes, and liability for them are stipulated exclusively by the laws of Ukraine, which are adopted by Verhovna Rada of Ukraine.

According to the opinion of the subject of law for constitutional submission, article 23 of the Statute also contradicts above mentioned provisions of Ukraine's Constitution. Article 23 stipulates, that a person, found to be guilty by the International Criminal court, may be punished only pursuant to its provisions, and article 77 of the Statute, which stipulates the types of punishment to persons, found to be guilty in committing crimes.

On consideration of reasons, listed in sub-item 2.5, Constitutional Court of Ukraine reached a conclusion, that there were no grounds to recognize mentioned provisions of the Statute to be incongruous with Ukraine's Constitution.

2.7. Pursuant to sub-item "a" of item 1 of article 103 of the Statute, punishment in the form of deprivation of freedom takes place in the state, determined by the Court from the list of countries, which informed the Court of their readiness to accept the persons with established verdict.

The subject of law for constitutional submission considers, that these provisions of the Statute contradict to part three of article 63 of Ukraine's Constitution. Pursuant to it, " the convicted person enjoys all human and citizen's rights, with the exception of restrictions, determined by law and established by a court verdict", and part one of article 64 of Constitution of Ukraine, whereas " constitutional human and citizen's rights and freedoms shall not be restricted, except in cases, envisaged by the Constitution of Ukraine".

2.7.1. Regardless of the fact, that article 120 of the Statute prohibits reservations to this international treaty, its articles 103, 124 allow participating states to make statements, which exclude any arising obligations for them by specific provisions of the Statute during certain time period, or to establish special conditions of cooperation in the framework of this international treaty.

Therefore, possible limitation of rights and freedoms of Ukraine's citizens in case of their serving punishment by other procedure, different to one established by the laws of Ukraine, is lifted based

on declaration, made by the state (Ukraine in this case), stating readiness to accept its citizens, sentenced by a verdict of International criminal court, in order to serve punishment in their country.

2.7.2. In order to settle this dispute, it is necessary to take into consideration also provisions of item 3 article 103 of the Statute. They stipulate, that International criminal court, determining the state, where a person, sentenced by it, should serve the punishment, considers, inter alia, personal opinion of the sentenced person (sub-item "c"), citizenship of this person (sub-item "d"), as well as recognized internationally agreed standards of treating convicts (sub-item "b").

Aforementioned circumstances, considering valid international obligations of Ukraine, provide for the grounds to conclude, that sub-item "a" of item 1 of article 103 of the Statute does not contradict part three of article 63 and part one of article 64 of Ukraine's Constitution, as the provisions of this sub-item will not result in limitation of human and citizen's rights and freedoms, which exceed the limits of cases, stipulated by Ukraine's Constitution (part two of article 64).

2.8. Item 1 of article 121 of Ukraine's Constitution stipulates, that procuracy of Ukraine constitutes a unified system, that is entrusted with prosecution in court on behalf of the state.

The subject of law for constitutional submission considers, that item 4 of article 42 of Statute does not comply with this constitutional provision. Pursuant to this Statutory provision, prosecutor's Chancellery acts as a separate organ of the International criminal court. It is responsible for procurement of substantive information about crimes, which are subject-matter of the Court's jurisdiction, their study and investigations and criminal persecution in Court. Employees of the Chancellery do not conduct requests and do not execute instructions from any external source.

According to opinion of the subject of law for constitutional submission, also item 2 of article 66 of the Statute does not comply with mentioned provision of Ukraine's Constitution, whereas gravity of a crime should be proved by prosecutor.

Settling this dispute, Constitutional Court of Ukraine considers, firstly, that procuracy prosecutes in court on behalf of the state, in virtue of article 121 of Constitution of Ukraine, related to internal, and not international-legal jurisdiction. Secondly, pursuant to item 4 of article 42 of the Statute, prosecutor, who is to ensure criminal prosecution in Court and to prove gravity of guilt of the accused person, is elected by participating states of the Statute, therefore, their will is not limited thereof.

Since pursuant to part one of article 9 of Constitution of Ukraine, international treaties, agreed to be binding by the Verhovna Rada of Ukraine, become part of the national legislation of Ukraine, corresponding provisions of the Statute, concerning support of accusations in the International criminal court, may be implemented into the laws of Ukraine without introduction of changes to the Constitution of Ukraine.

It provides grounds for a conclusion, that item 4 of article 42 and item 2 of article 66 of the Statute do not contradict provisions of item 1 of article 121 of Constitution of Ukraine.

Judging by aforementioned and pursuant to the article 151 of the Constitution of Ukraine, articles 51, 62, 66, 70, 88 of the Law of Ukraine "On Constitutional Court of Ukraine", Constitutional Court of Ukraine


has reached conclusion:

1. To declare the Rome Statute of International Criminal Court, signed in the name of Ukraine on 20 June 2000, submitted to Verhovna Rada of Ukraine for granting consent in its obligation, as not corresponding to Constitution of Ukraine in the part, concerning the provisions of paragraph ten of the preamble and article 1 of the Statute, whereas "International criminal court ... supplements national organs of criminal justice".

2. The holding of the Constitutional Court of Ukraine in the case of constitutional request of Ukraine's President to provide summary conclusion as to conformity of Ukraine Constitution to Rome Statute of the International Criminal Court, signed in the name of Ukraine on 20 January 2000, submitted to Verhovna Rada of Ukraine for granting consent in its obligation, is mandatory for execution, final and cannot be appealed.

The conclusion of the Constitutional Court of Ukraine is subject to promulgation in " The Visnyk of Constitutional Court of Ukraine" and other official publications of Ukraine.

References: International Treaties and Documents

Rome Statute of the ICC 1998 .