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## **Decision of the Constitutional Court of Ukraine No. 13-rp of May 11, 2010 (Case of the 2009 State Budget and the National Bank)**

City of Kyiv  
May 11, 2010  
No. 13-rp/2010  
Case No. 1-22/2010

The Constitutional Court of Ukraine, composed of justices of the Constitutional Court of Ukraine:

Andrii Andriiovych Stryzhak—presiding,  
Iurii Vasyl'ovych Baulin,  
Vasyl' Dmytrovych Bryntsev,  
Serhiy Leonidovych Vdovichenko,  
Anatolii Serhiiovych Holovin,  
V'iacheslav Vasyl'ovych Dzhun',  
Anatolii Oleksandrovych Didkivs'kyi,  
Ivan Petrovych Dombrovs'kyi,

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English translation © 2011 M.E. Sharpe, Inc., from the Ukrainian. “Decision of the Constitutional Court of Ukraine in the Case of the Constitutional Petition of the President of Ukraine with Regard to the Conformity to the Constitution of Ukraine (Constitutionality) of the Provisions of Articles 1.1, 1.2, 2.44, 4.2, 6.45, 34.58, 34<sup>1</sup>, 76.1.5, Paragraph 4 of Article 76.1.7, and Article 76.3 of the Law of Ukraine ‘On the State Budget of Ukraine for 2009,’ Article 5.5 of the Law of Ukraine ‘On the National Bank of Ukraine,’ and the Law of Ukraine ‘On Amending the Law of Ukraine “On the State Budget of Ukraine for 2009,” and Other Laws of Ukraine,” Available at [www.ccu.gov.ua/uk/doccatalog/list?currDir=113566/](http://www.ccu.gov.ua/uk/doccatalog/list?currDir=113566/).

Translated by Robert J. Valliere.

Volodymyr Mykhailovych Kampo,  
 Mykhailo Ivanovych Kolos,  
 Dmytro Dmytrovych Lylak,  
 Iaroslava Vasylivna Machuzhak,  
 Iurii Ivanovych Nikitin,  
 Petro Bohdanovych Stetsiuk—justice-rapporteur,  
 Pavlo Mykolaiovych Tkachuk,  
 Viktor Ivanovych Shyshkin,

has considered in plenary session the case of the constitutional petition of the president of Ukraine with regard to the conformity to the constitution of Ukraine (constitutionality) of the provisions of Articles 1.1, 1.2, 2.44, 4.2, 6.45, 34.58, 34<sup>1</sup>, 76.1.5, paragraph 4 of Article 76.1.7, and Article 76.3 of the law of Ukraine “On the State Budget of Ukraine for 2009” No. 835-VI of December 26, 2008 (*Vidomosti Verkhovnoi Rady Ukrainy*, 2009, nos. 20–22, item 269) with subsequent amendments, Article 5.5 of the law of Ukraine “On the National Bank of Ukraine” No. 679-XIV of May 20, 1999 (*Vidomosti Verkhovnoi Rady Ukrainy*, 1999, no. 29, item 238) with subsequent amendments, and the law of Ukraine “On Amending the Law of Ukraine ‘On the State Budget of Ukraine for 2009,’ and Certain Other Laws of Ukraine” No. 1608-VI of August 21, 2009 (*Holos Ukrainy*, 2009, October 15).

The reason for consideration of the case was the constitutional petition of the president of Ukraine in accordance with Articles 39 and 40 of the law of Ukraine “On the Constitutional Court of Ukraine.”

The grounds for consideration of the case in accordance with Article 71 of the law of Ukraine “On the Constitutional Court of Ukraine” is the assertion of the petitioner that certain provisions of the law of Ukraine “On the State Budget of Ukraine for 2009,” law of Ukraine “On the National Bank of Ukraine,” and law of Ukraine “On Amending the Law of Ukraine ‘On the State Budget of Ukraine for 2009’ and Other Laws of Ukraine” are unconstitutional.

Having heard the report of Justice P.B. Stetsiuk and reviewed the case materials, the Constitutional Court of Ukraine

*has established:*

1. Exercising his right to constitutional petition, the president of Ukraine has petitioned the Constitutional Court of Ukraine to declare unconstitutional the provisions of Articles 1.1, 1.2, 2.44, 4.2, 6.45, 34.58, 34<sup>1</sup>, 76.1.5, paragraph 4 of Article 76.1.7, and Article 76.3 of the law

of Ukraine “On the State Budget of Ukraine for 2009” No. 835-VI of December 26, 2008, with subsequent amendments (hereinafter, Law No. 835), Article 5.5 (according to the petition, 5.3) of the law of Ukraine “On the National Bank of Ukraine” No. 679-XIV of May 20, 1999, with subsequent amendments (hereinafter, Law No. 679), and the law of Ukraine “On Amending the Law of Ukraine ‘On the State Budget of Ukraine for 2009’ and Certain Other Laws of Ukraine” No. 1608-VI of August 21, 2009 (hereinafter, Law No. 1608).

The constitutional petition asserts that the excess in the estimated revenues over estimated expenditures for the current year envisioned for submission by the National Bank of Ukraine in 2009 to the state budget of Ukraine is nothing more than advance financing of the expenditures of the state budget of Ukraine, and requires that the National Bank of Ukraine released additional funds into circulation without any basis. This will lead to an acceleration of the inflation rate and the undermining of the exchange rate of the hryvnia, which contravenes Articles 1, 3, 46, 48, and 99.2 of the constitution of Ukraine.

In the opinion of the head of state, the prerogative to adopt the state budget of Ukraine, and in particular to define the principal disbursers of its funds, by means of the establishment of budgetary authority for them, belongs to the legislative powers of parliament. Therefore, granting this authority to the government of Ukraine is the delegation by parliament of its legislative functions to the Cabinet of Ministers of Ukraine.

The approval of the list of objects, measures, and amounts of budget funds that will be directed toward the fulfillment of the corresponding budgetary program by the Cabinet of Ministers of Ukraine by prior agreement with the Budget Committee and Committee on Finance and Banking Activity of the Verkhovna Rada of Ukraine, as well as the principal disbursers of state budget funds, as indicated in the constitutional petition, violates the requirements of Article 89.1 of the constitution of Ukraine, according to which committees of the Verkhovna Rada of Ukraine are created for the performance of legislative work, the preparation and preliminary consideration of matters relegated to the authority of the Verkhovna Rada of Ukraine, and the exercise of monitoring functions according to the constitution of Ukraine.

The president of Ukraine emphasizes that the provisions of Article 5.5 of Law No. 679, by which the central bank of the nation is made accountable to the government of Ukraine, are not compatible with the

principle of economic independence of the National Bank of Ukraine. This is one of the fundamental principles of the bank's activity and is codified in Law No. 679. Therefore, Article 5.5 does not conform to Articles 6, 19.2, and 85.2 of the constitution of Ukraine.

The petitioner also claims that the provisions of Law No. 1608, by which laws 735 and 679 were amended, went into effect in violation of constitutional procedure, and there are thus grounds to declare them unconstitutional.

2. The chairperson of the Verkhovna Rada of Ukraine, Ministry of the Economy of Ukraine, National Bank of Ukraine, Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine, the National University of the State Tax Service of Ukraine, the Vadym Het'man National Economic University of Kyiv, and the Ternopil' National Economic University have expressed their opinions regarding the subject matter of the constitutional petition.

3. The Constitutional Court of Ukraine proceeds from the following in resolving the matters raised in the constitutional petition.

3.1. Ukraine is a law-governed state in which the bodies of state power are required to act only on the grounds, within the limits, and in the manner envisioned by the constitution and laws of Ukraine (Articles 1, 6.2, and 19.2 of the constitution of Ukraine).

The Verkhovna Rada of Ukraine, as the sole body of legislative power, adopts laws and other acts under the procedure defined by the constitution and laws of Ukraine. According to Article 88.2.3 of the constitution of Ukraine, the chairman of the Verkhovna Rada of Ukraine signs acts adopted by the Verkhovna Rada of Ukraine. According to the legal opinion of the Constitutional Court of Ukraine, acts of the Verkhovna Rada of Ukraine are decisions of the Verkhovna Rada of Ukraine on matters relegated to its authority, that is, documents adopted by the number of votes of the people's deputies of Ukraine as stipulated by the constitution of Ukraine in the form of laws, decrees, and so on (paragraph 6 of point 5 of the reasoning part of Decision No. 16-rp/2003 of October 14, 2003).

Article 94.4 of the Fundamental Law of Ukraine requires that [for the override of a presidential veto] the Verkhovna Rada of Ukraine has to adopt vetoed laws by not less than two-thirds of its constitutional composition. This extends only to laws, for which proposals of the president of Ukraine have been entirely or partially rejected.

The petitioner asserts that Law No. 1608 went into force in violation of the procedure stipulated by Article 94 of the constitution of Ukraine. The president of Ukraine emphasizes that Law No. 1608 (adopted on July 1, 2009), returned by him for reconsideration to parliament on August 3, 2009, differs textually from the same law (adopted on August 21, 2009, by overriding his veto) in subpoint 3 of point 1 of Section I, in which the date of its adoption is given as “July 1, 2009.”

The Constitutional Court of Ukraine indicated in Decision 17-rp/2009 of July 7, 2009,\* that even if all the proposals of the president of Ukraine are rejected and the law remains textually unchanged, it has to be re-adopted by a vote of the people’s deputies of Ukraine with the number of votes stipulated in Article 94.4 of the constitution of Ukraine. Under those circumstances, the date of adoption of the law should be considered the date of its final vote based on the results of the reconsideration. That is the date that should be indicated in the promulgation of the law and its publication (paragraph 4 of subpoint 4.1 of point 4 of the reasoning part of the decision).

Thus, analysis of Law No. 1608 shows that its provisions remain textually unchanged, while the procedure for its enactment conforms to Article 94.4 of the constitution of Ukraine.

3.2. According to the constitution of Ukraine, the principal function of the National Bank of Ukraine is to ensure the stability of the monetary unit (Article 99.2). In fulfilling this function, the National Bank of Ukraine promotes maintenance of the stability of the banking system as well as price stability within the limits of its authority (Article 6.2 of Law No. 679).

The National Bank of Ukraine is the central bank of the state, and its legal status, tasks, functions, authority, and principles of organization are defined by the constitution of Ukraine, Law No. 679, and other laws of Ukraine. The National Bank of Ukraine is an economically independent body that expends its own revenues within the limits of approved budget estimates, and also out of the state budget of Ukraine in the cases defined by law (Articles 2.1 and 4.1 of Law No. 679). Law No. 679 envisions that the Board of the National Bank of Ukraine approves the estimated revenues and expenditures of the National Bank of Ukraine, and submits

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\*Translated in *Statutes and Decisions*, vol. 45, no. 2 (March–April 2010), pp. 78–89.—Ed.

predicted information regarding the net estimated budget amounts to the Verkhovna Rada of Ukraine and Cabinet of Ministers of Ukraine by September 1 of the current year (Article 9.1.4 of Law No. 679).

Section IX of Law No. 679, “The Relationship with the President of Ukraine, Verkhovna Rada of Ukraine, and Cabinet of Ministers of Ukraine,” states that the National Bank of Ukraine is accountable to the president of Ukraine and Verkhovna Rada of Ukraine within the limits of their constitutional authority (Article 51.1), and defines the relationship of the National Bank of Ukraine with the Cabinet of Ministers of Ukraine (Article 52).

Law No. 679 stipulates the forms of reporting, in particular the reports of the chairperson of the National Bank of Ukraine to the Verkhovna Rada of Ukraine regarding the activity of the National Bank of Ukraine, submitting information twice a year to the president of Ukraine and Verkhovna Rada of Ukraine on the state of the monetary and credit market in the country (Articles 51.2.4 and 51.2.5).

The National Bank of Ukraine annually informs the Verkhovna Rada of Ukraine regarding the direction of the monetary, credit, and currency policy developed by the National Bank of Ukraine for the following year and the long term (Article 24.2 of Law No. 679). Furthermore, the National Bank of Ukraine is required to submit quarterly reports to the president of Ukraine, Cabinet of Ministers of Ukraine, and Committee on Finance and Banking Activity of the Verkhovna Rada of Ukraine regarding noncash emission of funds in the corresponding period, namely, the conduct of operations for bank refinancing, interventions in the interbank currency market, and operations in the capital market (Article 51.3 of Law No. 679).

The receipt by the government of Ukraine of the report on the execution of the revenue and expenditure estimates of the National Bank of Ukraine conforms to the provisions of the constitution of Ukraine, which sets out the obligation of the Cabinet of Ministers of Ukraine to submit, along with a draft law on the state budget of Ukraine for the coming year, a report on progress on implementation of the state budget of Ukraine for the current year, as well as a report on the execution of the state budget of Ukraine for the current year (Articles 96.2, 97.1 and 116.6).

It can be seen from the substance of these provisions that the submission by the National Bank of Ukraine of a report on the fulfillment of estimated revenues and expenditures of the National Bank of Ukraine

to the Cabinet of Ministers of Ukraine and Verkhovna Rada of Ukraine that is reflected in Article 5.5 of Law No. 679 in the wording of Law No. 1608 corresponds to the provisions of Article 9.1.4 of Law No. 6709, and does not encroach on the economic independence of the National Bank of Ukraine as defined by Article 4 of Law No. 679. Thus, Article 5.5 of Law No. 679 does not contravene Articles 6, 19.2, and 85.2 of the constitution of Ukraine.

4. According to Article 150 of the Fundamental Law of Ukraine and Decision No. 15-rp/2001 of the Constitutional Court of Ukraine of November 14, 2001, in a case of residence permits, the jurisdiction of the Constitutional Court of Ukraine extends to legal acts that are in force.

The state budget of Ukraine is approved annually by the Verkhovna Rada of Ukraine for the period of January to December 31, or for another period under special circumstances (Article 96.1 of the constitution of Ukraine), by means of the adoption of the corresponding law.

Insofar as the disputed provisions of Articles 1.1, 1.2, 2.44, 4.2, 6.45, 34.58, 34<sup>1</sup>, and 76.3 of Law No. 835 are no longer in force due to the end of the fiscal year, the constitutional proceeding in the case in this area is subject to suspension on the basis of Article 45.3 of the law of Ukraine “On the Constitutional Court of Ukraine”—lack of jurisdiction of the Constitutional Court of Ukraine over the matters raised in the constitutional petition.

The provisions of Articles 76.1.5 and paragraph 4 of Article 76.1.7 of Law No. 835 were deleted by Law No. 1608 and were no longer in effect as of October 15, 2009, so the constitutional proceeding in this area is also subject to suspension on the indicated grounds.

Proceeding from the foregoing and guided by Articles 147, 150, and 153 of the constitution of Ukraine, Articles 45, 51, 61, 63, 65, 67, and 73 of the law of Ukraine “On the Constitutional Court of Ukraine,” and §51 of the Rules of Procedure of the Constitutional Court of Ukraine, the Constitutional Court of Ukraine

*has held:*

1. That the provisions of Article 5.5 of the law of Ukraine “On the National Bank of Ukraine” No. 679-XIV of May 20, 1999, with the amendments made by the law of Ukraine “On Amending the Law of Ukraine ‘On the State Budget of Ukraine for 2009’ and Certain Other Laws of Ukraine” No. 1608-VI of August 21, 2009, conform to the constitution of Ukraine (are constitutional).
2. That the constitutional proceeding in the case with regard to the

conformity to the constitution of Ukraine (constitutionality) of the provisions of Articles 1.1, 1.2, 2.44, 4.2, 6.45, 34.58, 34<sup>1</sup>, 76.1.5, paragraph 4 of Article 76.1.7, and Article 76.3 of the law of Ukraine “On the State Budget of Ukraine for 2009” No. 835-VI of December 26, 2008, with subsequent amendments is suspended on the basis of Article 45.3 of the law of Ukraine “On the Constitutional Court of Ukraine”—lack of jurisdiction of the Constitutional Court of Ukraine over the matters raised in the constitutional petition.

3. The decision of the Constitutional Court of Ukraine is binding on the territory of Ukraine, is final, and may not be appealed.

The decision of the Constitutional Court of Ukraine shall be published in the *Visnyk Konstytutsiinoho Sudu Ukrainy* and other official publications of Ukraine.

Constitutional Court of Ukraine



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