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LEGISLATIVE OMISSIONS IN CONSTITUTIONAL JURISPRUDENCE: UKRAINIAN PRACTICE IN A COMPARATIVE VIEW

Abstract. Every legal system contains, to a greater or lesser extent, legal relationships that are not regulated. However, they ought to be regulated by general legal norms and, for this reason, they constitute gaps in the law.

Owing to their importance and their connection with the principle of constitutionality, legislative omissions have become the subject of intensive study in contemporary legal doctrine. In analysing the development of the functions of Constitutional Courts, increasing reference has been made not only to their role as a “negative legislator” but also as a “positive legislator”, a role that bodies exercising constitutional review are progressively finding easier to perform.

Leaving aside evolutionary justifications (“function creates the organ”, in which necessity confers power), intrusion into the sphere of the legislator’s freedom of discretion is generally alarming (at least in theoretical terms). The legislator is responsible for enacting laws and, moreover, for deciding when they should be adopted.

Keywords: constitutional justice, constitutional jurisdiction bodies, legislative omissions, judicial practice, gaps in law

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ZANIECHANIA USTAWODAWCZE W ORZECZNICTWIE KONSTITUCYJNYM: PRAKTYKA UKRAIŃSKA W UJĘCIU PORÓWNAWCZYM

Streszczenie. Każdy system prawny charakteryzuje się większą lub mniejszą liczbą stosunków prawnych, które nie są regulowane przez ogólne normy prawne, choć powinny być, i które z tego powodu stanowią luki w prawie. Ze względu na swoje znaczenie i pozycję w odniesieniu do zasady konstytucyjności, luki prawne są przedmiotem intensywnych badań we współczesnej doktrynie prawnej. Analizując rozwój funkcji sądów konstytucyjnych, nieustannie wspomina się o roli nie tylko „negatywnego ustawodawcy”, ale także „pozytywnego ustawodawcy”, którą coraz łatwiej od czasu do czasu pełnią organy kontrolujące konstytucyjność. Pomijając uzasadnienia ewolucyjne („funkcja tworzy organ”, w którym to przypadku to konieczność nadaje władzę), ingerencja w sferę swobody konfiguracji ustawodawcy jest ogólnie niepokojąca (oczywiście z teoretycznego punktu widzenia). Ustawodawca jest odpowiedzialny za tworzenie praw, a ponadto za podejmowanie decyzji o tym, kiedy je przyjąć.

Słowa kluczowe: sprawiedliwość konstytucyjna, organy jurysdykcji konstytucyjnej, luki legislacyjne, praktyka sądowa, luki prawne

1. INTRODUCTION

The issue of controlling the constitutionality of legislative omissions is considered one of the most turbulent and fascinating topics in modern constitutional law. This is evident when considering the significant challenges that judicial review of legislative inaction poses to legal dogma. Dominant legal doctrines across various European countries acknowledge the presence of legal gaps and offer diverse definitions for them. These varying definitions are inherently linked to different conceptualizations of what a legal gap entails. Furthermore, these differing approaches have paved the way for the classification of such gaps.

The essential elaboration of the Constitution by the legislator, the role that the legislative branch must assume in this process of constitutional concretization, and the discretion afforded to the legislator in determining the timing of such development, constitute the first of the most significant challenges that constitutional dogma must address.

The constitutional oversight of legislative inaction faces two hitherto insurmountable difficulties: what the sanction for such inaction should be, and how the fulfillment of the legislative obligation can be ensured. Providing supervision without enforcement authority does not seem to be an effective remedy. Nevertheless, the term “unconstitutionality by omission” encompasses diverse issues that will be analyzed in the following sections.

2. THE CONCEPT AND TYPOLOGY OF “LEGISLATIVE OMISSIONS” IN THE CONSTITUTIONAL PROCESS

The problem of legal gaps is extensively analyzed in the legal doctrines of modern states; however, there is no singular approach to defining the concept of a ‘legal gap’ or the methods for filling it. For instance, the German jurist Karl Engisch defines legislative gaps as the absence of specific rules for a particular form of behavior. He categorizes these gaps as either conscious (political and legal gaps) or unconscious, as well as distinguishing between primary and secondary gaps (Sales 2013). In Georgian legal doctrine, the concept of a legal gap is interpreted as “an issue that requires consideration and resolution, yet is neither addressed nor regulated by any legal norm” These gaps are further classified into visible and invisible, as well as primary and secondary gaps (Goradze 2021). The presence of an invisible gap is known to the legislator. However, the legislator deliberately refrains from correcting this flaw, making it clear – according to G. Horod – that the key to solving the problem lies in ethics rather than in law (or other legal acts).

In his classic work on this topic, Mortati sought to define a general concept of omission that would allow for the subsequent classification of the “species” in which it manifests (Mortati 1972). At the same time, he established a clear distinction between omission and the closely related concept of “gaps.” Thus, in general, a legislative omission refers to any failure to enact a provision required by the Constitution. Unlike a simple gap, an omission always constitutes a breach of an obligation. While gaps may arise involuntarily, an omission results from a deliberate act of will and can be likened to a clearly negative position taken by the legislator. Therefore, the meaning of an **omission** can be identified as a peculiar expression of the legislator’s will, following the ancient maxim: *ubi lex voluit dixit, ubi noluit tacuit* (where the law wanted, it spoke; where it did not want, it remained silent). However, Mortati’s initial definition does not establish definitive terms for every scenario. Consequently, the primary issue remains the precise meaning of ‘omission’ and its specific characterization in relation to the concept of a “gap.”

The anomalies that provoke objections against the legislature are, therefore, the absence of normative acts which the interpreter of the Constitution perceives as omissions, revealing a legislative mandate ignored by the legislature. In this way, they are distinguished from *lacunae*, which are gaps identified by the interpreter of a law when applying it, in terms that can be rationally deduced from the intention of the “systemic” legislator, and whose correction through *ad casum* regulations is not aimed at contradicting that intention, but rather at its execution.

Wessel fundamentally denies the violation of rights due to the absolute inaction of the legislator (“*eine Grundrechtsverletzung durch ein absolutes Unterlassen des Gesetzgebers*”), which, needless to say, occurs when the legislature omits a constitutionally necessary legislative provision. It follows that the Federal

Constitutional Court of Germany (hereafter, BVerfG) rejected a constitutional complaint challenging a violation of the fundamental right to the free development of the individual (*“eine Verletzung des Grundrechts auf freie Entfaltung der Persönlichkeit”*) as inadmissible (*“unzulässig”*). The complaint was rejected because the legislator had failed to implement a law that would provide everyone with the opportunity to assert a claim commensurate with this right (Wessel 1952).

The aforementioned constitutional judge proceeds to discuss relative omission (*relatives Unterlassen*), pointing out that the legislator is reproached for violating fundamental rights when it is accused of regulating only specific legal requirements for a certain group, in violation of the principle of equality (*“unter Verletzung des Gleichheitsgrundsatzes”*). In such a case, according to Wessel, the constitutional complaint is actually directed not against an omission, but against a positive action of the legislator (*“die Verfassungsbeschwerde in Wahrheit nicht gegen eine Unterlassung, sondern gegen ein positives Handeln des Gesetzgebers”*). In this case, the remedy for the complaint, if duly founded, could lead not only to a review of the actions of the legislator – who, due to the “inaction of a certain group” (*“durch Unterlassung der Beteiligung einer bestimmten Gruppe”*), violated Article 3 of the Grundgesetz, but also to a declaration of unconstitutionality (*“die Feststellung der Verfassungswidrigkeit”*). This, in turn, would lead to the nullity of the partial regulation (*“die Nichtigkeit der gesetzlichen Teilregelung”*). Wessel’s conclusion is unequivocal: *“In derartigen Fällen läge stets eine unmittelbare Grundrechtsverletzung durch den Gesetzgeber vor”* (in such a case, there would always be an immediate violation of fundamental rights by the legislator) (Wessel 1952).

The conclusion from the above is that, for Wessel, absolute omissions (*Absolutes Unterlassen des Gesetzgebers*) are those characterized by a complete absence of legislative development of a constitutional provision. In contrast, relative omissions (*relatives Unterlassen*) imply partial regulation that, by omitting certain groups from the exercise of a right, violates the principle of equality. Based on the author’s formulation, it is evident that the significance of this dual typology lies in the consequences associated with each type: the justiciability of relative omissions as opposed to the non-justiciability (or lack of control) of absolute omissions.

Taking into account that legal doctrine is reflected in various ways within constitutional jurisprudence (General Report of the XIVth Congress 2008), G. Khrystova emphasizes that “only a small part of constitutional courts consider legal gaps due to the complete inaction of the legislator or other subject of lawmaking” (*“unconditional omission”*). Most courts exercise constitutional review over legislative gaps only as a result of the improper action – rather than the inaction – of the legislator (*“relative omission”*). In the latter case, a law or other legal act characterized by the absence or insufficiency of a legal prescription, or a group of prescriptions, becomes the subject of constitutional review (Khrystova 2020).

The analysis of constitutional legal theory and practice provides grounds to define a legislative omission as a violation of constitutional norms and principles. This violation manifests in the failure of authorized subjects, primarily state bodies such as the Verkhovna Rada of Ukraine, to establish a legislative basis for an effective legal mechanism to properly regulate essential social relations. The need for such regulation is directly required or mandated by the Constitution of Ukraine (Kolodii, Ternavska 2024).

According to A. Krusyan, gaps in constitutional law are characterized by several key factors: constitutional and legal norms do not regulate a specific type of social relations; such norms are entirely absent from constitutional legislation; the methods for the constitutional regulation of these relations have not been established; and the principles upon which their regulation should be based are not fixed within the constitutional framework (Krusian 2021).

The National Report of the Constitutional Court of Ukraine on: “Problems of Legislative Gaps in Constitutional Jurisprudence” noted that the Court’s competence does not include the investigation or identification of legislative gaps, nor the assessment of the constitutionality of omissions in legal regulation.” An analysis of constitutional norms indicates that the Constitution of Ukraine does not provide for special procedures to address such legislative gaps.

3. THE CONCEPT OF THE CONSTITUTIONAL COURT AS A “POSITIVE” OR “NEGATIVE” LEGISLATOR

When studying legislative omissions and aiming for their complete and systematic analysis, it is worth examining their definition, the subjects involved, and the procedure for their detection. Undeniably, the courts occupy the dominant and most important place in this process.

In Germany, 1957 and 1958 marked a turning point in the BVerfG’s jurisprudence. In its judgments of February 20, 1957, and June 11, 1958, rendered regarding constitutional complaints, the Court unequivocally recognized that unconstitutionality may arise not only from an act but also from legislative inaction. Notably, both cases involved partial omissions, marking the first steps toward the BVerfG’s dogmatic recognition of the “arbitrary exclusion of benefit” (“*Willkürlicher gleichheitswidriger Begünstigungsausschluss*”) as a violation of the principle of equality. However, judicial review was not limited to such omissions. In a pivotal decision on January 29, 1969, the Federal Constitutional Court went further by examining the absolute inaction of the legislator. This landmark case warrants at least a brief examination.

With this decision, the BVerfG ruled on a constitutional complaint (“*Verfassungsbeschwerde*”) filed against a judgment of the Kiel Regional Court. The lower court had prioritized several pre-constitutional provisions of the Civil

Code, even though they violated the principle of equality for children born out of wedlock (*“uneheliche Kinder”*) compared to children born in wedlock (*“eheliche Kinder”*). This equality is expressly mandated by Art. 6(5) of the Basic Law (GG), which at the time was still awaiting legislative implementation.

In view of the legislative delay, the BVerfG held that it was no exaggeration to conclude that the “reasonable time” limit had expired. Twenty years after the Basic Law’s entry into force, the legislator had still not regulated fundamental aspects of life as required by Art. 6(5), despite passing numerous laws that were significantly less urgent from a constitutional perspective. Furthermore, the Court maintained that once the “reasonable time” for Parliament to fulfill its duty had passed, and given the relatively straightforward nature of the constitutional provision, ordinary courts could (and should) apply the constitutional rule directly.

In short, the German Court not only addressed relative omissions but also absolute omissions in cases where legislative inaction led to the application of unconstitutional norms that conflicted with fundamental rights and values.

According to legal doctrine, the Spanish Constitutional Court does not, in principle, exercise legislative functions. The Court itself stated this in one of its earliest decisions: “The Constitutional Court is the supreme interpreter of the Constitution, not the legislator, and may only be asked to rule on the conformity or non-conformity of provisions with the Constitution” (STC 5/1981, of February 13) (Requejo Pagés 2007).

This ruling must be applied with particular caution and restraint, given that

[T]he law, as an expression of the will of the people, can only be repealed or amended by representatives of that will. Only if a legal provision violates the Constitution is this Court empowered to repeal it. However, this power may be exercised only when grave and compelling reasons so require: when a constitutional body or a significant part thereof confirms the existence of such a violation, or when, if such a violation were not declared, the judicial body would find itself violating the Constitution, since, in accordance with the rule of law (Article 117.1 of the Constitution), it does not have the power to disregard it, even if it considers it to be contrary to a superior but prior norm. When these serious and compelling reasons are absent, respect for the legislature requires that this Court refrain from making any declaration. (STC 17/1981, June 1, FJ 4) (Requejo Pagés 2007)

Thus, the role of the Constitutional Court corresponds to that of a so-called “negative legislator.” However, the normative nature of the Constitution – which is binding upon all public authorities, including the legislator – and its incorporation of the “social state” as a structural principle, have changed this dynamic. This reflects a shift away from the liberal view of the Constitution as a norm that merely limits public authority. Instead, the constitutional text now includes specific mandates for legislative action and proclaims a general duty to intervene in social reality to align it with constitutional ideals.

Consequently, the protection of the Constitution depends on the legislator taking the positive actions established by the constituent assembly. Therefore, legislative silence – where the Constitution mandates action – constitutes an

unconstitutional omission that can only be remedied by enacting the required regulations (Requejo Pagés 2007).

This fundamental position underpins constitutional jurisprudence, which is strongly inspired by the philosophy of self-restraint. Scholarly doctrine generally agrees that the Constitutional Court has avoided both excessive activism and total passivity. Instead, it has managed to exercise its powers in a manner that respects the balance with the authority of the legislator.

This favorable assessment is undoubtedly linked to the Court's efforts to align the limits of its jurisdiction with the boundaries of constitutional interpretation. Consequently, legislative gaps were only addressed when a remedy could be achieved without resorting to lawmaking functions that lie outside the scope of judicial activity. In other words, the Court corrected the legislature's regulatory negligence using judicial methods where possible, while leaving the resolution of gaps that fall within the political sphere to the electoral process (Requejo Pagés 2007).

The principle of the separation of powers and the jurisdictional nature of the Constitutional Court imply that, ideally, only the legislative body should correct such omissions. However, the normative character of the Constitution and the legislature's accountability to the electorate emphasize the need to eliminate legislative silence that contradicts constitutional mandates. This can be achieved through a judicial declaration of unconstitutionality and, where feasible, by filling the normative void using the instruments available to the Court. Such a process represents a complex balancing act. It provides the constitutional basis for the proactive role the Court must inevitably play when addressing these cases.

The study of legislative omissions in the practice of the Constitutional Court of Ukraine is particularly relevant in comparative-law scholarship because Ukrainian legal doctrine has traditionally approached gaps in the law either as a problem of general legal theory (Matat 2016) or within discrete branches of law, including civil procedural law (Kalashnyk 2016), criminal procedural law (Zabarnyi 2017), and criminal enforcement law (Bielkina 2020). Gaps in law were also studied in the context of judicial lawmaking. S. Shevchuk identifies the need to resolve issues arising from inconsistent or contradictory legislation, as well as the presence of gaps and ambiguous provisions during judicial proceedings, as a primary reason for the emergence of judicial lawmaking in Ukraine (Shevchuk 2007). Appealing to the legislature is ineffective and may delay the judicial process. In addition, the Court cannot refuse to conduct judicial proceedings on the grounds of the existence of these problems (Yasynok 2023).

Viewed from a comparative perspective, the development of the concept of legislative omission in the practice of the Constitutional Court of Ukraine indicates that the Court has only recently begun to recognize this phenomenon in its jurisprudence. While the concept is still in its formative stages and lacks complete doctrinal integrity, several key provisions can already be identified.

First, the legislator has an obligation to provide legal regulation at the statutory level for specific social relations – particularly those that are insufficiently regulated – whenever such a duty is expressly or implicitly enshrined in the Constitution. Second, this regulation is necessary to comply with constitutional mandates and to ensure that fundamental rights and freedoms are fully protected, guaranteed, and implemented. Third, the legislator's failure to fulfill this constitutional duty results in a violation of constitutional provisions, especially those defining rights and freedoms, often leading to excessive restrictions or discrimination. Finally, a legal norm may be recognized as unconstitutional insofar as its regulation is insufficient. In such cases, the legislator is required to regulate these relations, often following specific requirements set forth by the Court (Gorodovenko 2024).

In its Decision No. 3-r/2022 dated December 23, 2022, the Court held that the current legislative regulation regarding the recalculation of pensions for constitutional complainants and other persons entitled to pensions under Article 37 of Law No. 3723 is not a mere legislative gap (*lacuna*). Instead, it constitutes a legislative omission that violates the Constitution of Ukraine. To develop, specify, and detail the provisions of Articles 3, 8, 24, and 46 of the Basic Law of Ukraine, the recalculation of pension amounts must be regulated by an act adopted by the Verkhovna Rada of Ukraine. The state's failure to provide a legislative basis for an effective mechanism to recalculate pensions and other social benefits – which serve as a primary source of livelihood – demonstrates the illusory nature of constitutional guarantees regarding the right to social protection. Such legislative omissions in the regulation of social relations violate several constitutional norms and principles, effectively rendering the right to social security ineffective.

Judge of the Constitutional Court of Ukraine O. Pervomaiskyi expressed a separate opinion in case No. 1-252/2018(3492/18). This case concerned the constitutional petition of 47 People's Deputies of Ukraine regarding the constitutionality of specific provisions of Article 6 of the Law of Ukraine "On Television and Radio Broadcasting" and Articles 15, 15-1, and 26 of the Law of Ukraine "On Cinematography."

Judge Pervomaiskyi noted that the absence of proper legislative regulation regarding legal liability, where such regulation is constitutionally mandated, should be qualified as a legislative omission rather than a mere legislative gap (*lacuna*). He emphasized that while a gap can be overcome through law enforcement, a legislative omission constitutes a direct violation of the Basic Law of Ukraine. The existence of a legislative omission in the regulation of legal liability may indicate the illusory nature of the constitutional guarantees established by paragraphs 1 and 22 of Part 1 of Article 92 of the Basic Law of Ukraine. This lack of clear legislative grounds undermines the principle that the acts which constitute offenses and the corresponding legal responsibility must be determined exclusively by the laws of Ukraine.

In another separate concurring opinion, Judge of the Constitutional Court of Ukraine Oleg Pervomaiskyi addressed the case of Serhiy Mykolayovych

Vasylenko's constitutional complaint. This case concerned whether paragraph 6 of Section II ("Final and Transitional Provisions") of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Priority Measures for the Reform of the Prosecutor's Office" was constitutional in light of guarantees of prosecutorial independence.

Judge Pervomaiskyi emphasized that the Court did not specify whether the procedure for compensating material or moral damage caused by unconstitutional acts and actions – as required by Article 152(3) of the Constitution – is currently regulated or if a legislative omission exists. In his view, the Court's restraint in this matter was appropriate. He argued that since the ordinary courts are the primary subjects of law enforcement, they are capable of determining this issue independently.

A similar observation can be made regarding the doctrine established by the Italian *Corte Costituzionale*. In its Decision No. 190 of 1970, the Court declared Article 304-bis of the Code of Criminal Procedure unconstitutional not for what it stated, but for what it omitted. Specifically, the Court found the provision constitutionally illegitimate insofar as it excluded the right of a defense lawyer to be present during the interrogation of their client.

This ruling faced radical rejection by the ordinary courts, which opposed its application. They argued that by remedying a legislative omission, the *Corte Costituzionale* had exceeded its functions. In Decision No. 62 of 1971, which Giuliano Amato described as unusual, the Court sought to supplement the existing body of law in a way that critics claimed went beyond its judicial mandate.

The Italian Constitutional Court upheld this position. Referring to the "sindacabilità delle omissioni del legislatore che si resolvono in violazione di precetti costituzionali" (the reviewability of omissions by the legislator that result in the violation of constitutional precepts), the Court noted: "sindacabilità che non si può in assoluto escludere senza far venir meno in ampia misura le garanzie del sistema" (reviewability that cannot be excluded without significantly undermining the guarantees of the system). It should be acknowledged that the case in question falls under the category of relative omissions. The legislative body's failure to provide for such measures resulted in discriminatory treatment, as the prosecution was permitted to be present during interrogations while the defense was excluded. This discrepancy led to a violation of the principle of the equality of arms (*égalité des armes*). In any case, the Italian Court also had the opportunity to examine the legislator's absolute omissions in detail.

In determining the systemic position of the Constitutional Tribunal (CT), defining the basic concepts of its jurisdiction and the specific nature of legislative omissions plays a crucial role. However, since these terms are judicial constructs of the Tribunal that are not yet firmly established in jurisprudence, significant problems arise regarding the delimitation of its jurisdiction. The challenge of defining the scope of the Tribunal's competence has been addressed numerous

times. The tools used in its jurisprudence to distinguish between acts subject to constitutional review and those excluded from this sphere have not yet produced transparent or predictable standards. This is largely due to the specific criteria applied in its practice (Stefanicki 2017).

According to the established case law of the Constitutional Tribunal, legislative omission is understood as the failure to adopt (issue) a normative act contrary to an existing legal obligation. Legislative omission consists of an overly narrow definition of the scope of applying a legal norm. If a legislative omission falls outside the jurisdiction of the Constitutional Tribunal, it falls within its competence. In the latter case, the Tribunal decides whether the provisions of a binding normative act are lacking, without which it may raise constitutional doubts (cf., for example, the Decision of the Constitutional Tribunal of May 6, 1998, reference no. K 37/97, OTC ZU No. 3/1998, para. 33; October 9, 2001, case No. SK 8/00, OTC ZU No. 7/2001, para. 211; November 16, 2004, case No. P 19/03, OTC ZU No. 10/A/2004, para. 106; Decision of the Constitutional Tribunal of July 14, 2009, case No. SK 2/08, OTC ZU No. 7/A/2009, para. 117). Thus, a claim of unconstitutionality may relate both to what the legislator has regulated in a particular act and to what it has omitted, despite a constitutional obligation to include such regulation. The case law of the Constitutional Tribunal has established that in instances of partial or incomplete regulation, it is possible to challenge the specific scope of that regulation. However, the Constitutional Tribunal cannot substitute itself for the legislator. The assessment of such contested regulations cannot result in the legal framework being supplemented with provisions that are merely desirable from the perspective of the applicant's interests.

The distinction between a "legislative omission" (unconstitutional inaction) and "incomplete regulation" (legislative under-inclusiveness) depends on whether there is a qualitative identity or a significant similarity between the issues regulated in a provision and those left outside its scope. In its jurisprudence, the Tribunal has exercised particular caution when making such classifications. Finding a hasty similarity between unregulated issues and those explicitly addressed in a provision exposes the Tribunal to accusations of exceeding the scope of judicial review and usurping lawmaking powers (cf. the Decision of the Constitutional Tribunal of March 5, 2013, Case No. K 4/12).

In the case law of the Constitutional Court of Romania, the concepts of legislative vacuum and legislative omission have been used to date in two categories of decisions: a) decisions in which the legislative vacuum was invoked as an argument for finding specific legal provisions unconstitutional; b) decisions in which the Court found inadmissible certain exceptions of unconstitutionality alleging legislative omissions and effectively requesting that the Court supplement the contested normative acts with additional provisions.

Thus:

- a) By Decision No. 62 of January 8, 2007, of the Constitutional Court, Law 278/2006, which repealed the offenses of insult and defamation from the Criminal Code, was declared unconstitutional. The grounds for the Decision included, among other things, the following: “The legal object of the offenses of insult and defamation, provided for in Articles 205 and 206, respectively, of the Criminal Code, is the dignity, reputation, and honor of the person.”
- b) The Constitutional Court consistently rejects as inadmissible exceptions of unconstitutionality which, by criticizing the lack of a legal provision with the content desired by the authors of the exceptions, seek to amend the law. In such cases, the Court maintains that it cannot act as a positive legislator and that the authority to adopt, amend, or supplement legislation belongs exclusively to the legislature. To support this position, it relies on Article 2(3) of Law No. 47/1992 on the organization and functioning of the Constitutional Court, which states that “the Constitutional Court shall rule only on the constitutionality of acts,” together with Article 11(1) of the same law, which provides that “the Constitutional Court shall rule only on the constitutionality of the acts referred to it, without being able to amend or supplement the provisions subject to review.”

4. CONCLUSION

In general, the legislative branch has shown a clear willingness to remedy the shortcomings identified by the Court. This stems either from an awareness of its own constitutional responsibility or from a desire to avoid the consequences of interim measures developed by the Court to fill identified gaps. Relative omissions – or imperfect and insufficient legislation – are relatively common in ordinary law, particularly regarding the principles of equality and non-discrimination. The same applies to imperfect legislative regulation of guarantees concerning state intervention in fundamental freedoms.

The methods available to the Court to remedy such omissions primarily consist of two approaches. First, the Court may require the judiciary to integrate imperfect rules through the use of analogy. Second, the Court may combine a formal declaration of unconstitutionality with annulling effects. By removing the consequences of imperfect rules and preventing their future application, the Court effectively compels the legislature to exercise its legislative powers.

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Okrema dumka suddi Konstytutsiinoho Sudu Ukrainy Oleha Pervomaiskoho u spravi № 1-252/2018(3492/18) za konstytutsiinym podanniam 47 narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) okremykh prypysiv statti 6 Zakonu Ukrainy “Pro telebachennia i radiomovlennia,” statei 15, 15-1, 26 Zakonu Ukrainy “Pro kinematohrafiu.” <https://zakon.rada.gov.ua/laws/show/nc03d710-21#Text>

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