

A Judge's Dissenting Opinions in Administrative Proceedings: Effective Judicial Protection, the Public Interest, and the Constitutional Limits of Judicial Power (The Author's Analytical Review, 2018–2026)

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Abstract

A dissenting opinion is a form, provided for by procedural law, in which a judge openly and professionally sets out disagreement with the majority's decision or with particular aspects of its reasoning. It is one manifestation of a judge's internal independence and, at the same time, is connected with impartiality, the authority of the judiciary, the secrecy of judicial deliberations, transparency, judicial ethics, and public confidence in the courts. As emphasised in Opinion No. 11 (2008) of the Consultative Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions, a properly reasoned dissenting opinion may contribute to the understanding of a judicial decision and to the development of the law; the European Commission for Democracy through Law (Venice Commission) has likewise noted its importance for public and academic discussion of judicial decisions and for judges' internal independence.

At the same time, a dissenting opinion does not alter the legal force of the judicial decision, does not create an autonomous rule binding on other courts, and is not a means of deciding the dispute anew. Its significance lies in recording an alternative interpretation of the law, identifying the risks inherent in the approach adopted, preserving arguments for the further development of case-law, and strengthening the court's intellectual responsibility for the reasons underlying its decision.

In administrative proceedings, the need for a dissenting opinion is particularly evident in cases in which the protection of a particular individual is directly connected with the functioning of public administration, the budgetary system, the management of natural resources, national security, local self-government, or the enforcement of judicial decisions. In such disputes, an individual outcome may have normative, financial, or institutional effects on an indeterminate class of persons. The effectiveness of judicial protection must therefore be assessed together with legal certainty, equality, the enforceability of the decision, and its consistency with the constitutional allocation of powers.

Judicial activism in the protection of rights is not unlimited. The Supreme Court directly applies the provisions of the Constitution of Ukraine as provisions having direct effect, ensures the uniform application of legal rules, and selects an effective remedy, but it may not substitute itself for the legislature, the Cabinet of Ministers of Ukraine, or the Constitutional Court of Ukraine. This boundary assumes particular importance in disputes concerning social payments. Article 95 of the Constitution of Ukraine requires that State expenditure for public needs be determined exclusively by the Law on the State Budget of Ukraine and that the budgetary system be based on the fair and impartial distribution of public wealth among citizens and territorial communities. A court must therefore protect a guaranteed right, but it should not create a new budgetary obligation outside the law in force or, in effect, revive a provision that has ceased to have effect.

The source base of this Review comprises the complete corpus of 58 dissenting opinions delivered by the author individually or jointly with other judges of the Cassation Administrative Court within the Supreme Court in 55 cases within the administrative jurisdiction. The Review covers, without exception, all of the author's dissenting opinions throughout his service as a judge of the Supreme Court as at 15 July 2026; the first is dated 25 April 2018 and the most recent is dated 13 May 2026. At the same time, the Review does not claim to provide a comprehensive account of the practice of dissenting opinions by other judges of the Supreme Court.

The material is grouped under the following themes: the legal nature of a dissenting opinion and the requirements applicable to judicial reasoning; access to a court and the prevention of procedural formalism; the constitutional limits of judicial power and the temporal effect of normative legal acts; social rights, the budgetary system, and Article 95 of the Constitution of Ukraine; protection of the public interest in disputes concerning land, urban development, natural resources, and cultural heritage; administrative procedure, control, sanctions, and proportionality; and consistency of case-law and the proper procedure for departing from legal conclusions.

The Review does not equate dissenting opinions with the official legal positions of the Supreme Court. Nor is it intended to demonstrate that the positions expressed in those opinions are more correct than the conclusions of the majority: such an assessment does not fall within the remit of the author of those opinions. The majority's position is described only to the extent necessary to identify the subject matter of the disagreement and is not an autonomous object of analysis.

The purpose of the Review is to systematise the arguments advanced in the dissenting opinions, to examine whether the author's reasoning is internally consistent, to identify the recurring criteria applied in that reasoning, and to assess their significance for administrative proceedings. This systematisation reveals a recurring approach: combining the effective protection of the individual with protection of the public interest; resisting excessive formalism without removing lawful conditions of access to a court; respecting the limits of the competence of each branch of power; and taking account of the consequences of a decision in favour of an individual claimant for the legal order, public finances, and the rights of others. The substance and limits of this approach are examined in Sections 1–7 and summarised in the Conclusions.

Keywords: dissenting opinion; Supreme Court; administrative proceedings; effective judicial protection; public interest; rule of law; legal certainty; separation of powers; constitutional jurisdiction; budgetary system; Article 95 of the Constitution of Ukraine; social rights; proportionality; access to a court; consistency of case-law.

1. A Dissenting Opinion as a Form of Judicial Dialogue and the Requirements of Reasoning

A dissenting opinion has value where it precisely identifies the subject matter of the disagreement, relates the alternative conclusion to the facts established, and explains its systemic consequences. Its purpose is not confined to recording a different outcome of the vote. It should identify the rule, principle, or method of interpretation on which the disagreement arose and demonstrate why the approach adopted by the majority may infringe rights, the public interest, legal certainty, or the limits of judicial competence.

In the dissenting opinion in case no. 826/2212/17 [2], the subject of analysis was not the final resolution of the dispute concerning restrictions on the circulation of securities, but whether there existed an exceptional legal problem sufficient to warrant referral of the case to the Grand Chamber of the Supreme Court. It was argued that the complexity of the issue or its connection with criminal proceedings did not, in themselves, demonstrate that the

appropriate judicial chamber was unable to formulate a legal conclusion. This approach safeguards functional certainty within the Supreme Court: referral of a case should serve to resolve a genuinely exceptional problem, not to replace the powers of the properly constituted court.

In the dissenting opinion in case no. 826/20288/16 [24], the disagreement concerned the interpretation of newly discovered circumstances. It was proposed that a person's voluntary acknowledgement of the status of ultimate beneficial owner should be assessed not formally, but by examining whether the relevant fact existed at the time of the original proceedings, whether it could have been known to the applicant, and whether it was material to the court's conclusion. This approach demonstrates that the stability of a final decision does not preclude its review where new and reliable information calls the factual basis of that decision into question. At the same time, review should not become a renewed examination of evidence that had previously been available to the party.

The dissenting opinion in case no. 990/188/23 [33] emphasised the foreseeability of the rules governing the qualification examination for candidates for judicial office. Assessing a participant's conduct after the examination had ended by reference to a criterion that had not been sufficiently defined or consistently applied during the procedure creates a risk of retrospective alteration of the rules. Legal certainty in competitive and disciplinary procedures requires the seriousness of a breach, its consequences, and the manner in which it is recorded to be comprehensible before an adverse decision is taken.

In the dissenting opinion in case no. 240/19209/21 [37], the disagreement concerned the insufficiency of the reasons given for departing from settled case-law on lump-sum cash assistance to a service member. It was emphasised that reliance on constitutional provisions concerning the special protection of persons who defended the State does not release a court from the duty to explain the relationship between the special law, the Supreme Court's previous conclusions, and the specific legal fact to which the law links the amount of the payment. The protective purpose of legal regulation must be realised through persuasive interpretation, not by replacing a normative prescription with a general appeal to fairness.

The dissenting opinion in case no. 990/155/24 [39] underlined the court's duty to provide a reasoned assessment of every material argument advanced by the parties, particularly where the respondent relies on judgments of the Supreme Court and the Grand Chamber of the Supreme Court concerning similar legal relations. Disregarding such an argument weakens the reasoning of the judgment, irrespective of the conclusion the court reaches on the substance of that case-law after analysing it. A judicial decision should demonstrate that the relevant argument was heard, examined, and accepted or rejected for legal reasons.

The dissenting opinion in case no. 460/25663/23 [56] raised the issue of the quality of the choice between two lines of case-law concerning a transfer from a special old-age pension to an old-age pension under the general law. The existence of divergent conclusions does not confer freedom to select either of them without explanation. The judicial chamber should first have determined whether a civil servant's pension is a different type of pension or a special form of old-age pension and only then assessed whether the case involved an initial award of pension. This dissenting opinion demonstrates the connection between conceptual precision, proper reasoning, and consistency of case-law.

Taken together, these approaches establish a requirement that a dissenting opinion constitute a structured legal argument. It should not merely contest the majority's conclusion, but also propose a criterion capable of application in future cases: when an exceptional legal problem exists; what constitutes a newly discovered circumstance; how the foreseeability of an administrative procedure is to be ensured; under what conditions departure from case-law is permissible; and how a court should respond to key arguments.

2. Access to a Court, the Right to Review, and the Prohibition of Excessive Procedural Formalism

The right to judicial protection entails more than the formal possibility of lodging a claim or appeal. The procedural mechanism must afford a person a genuine opportunity to obtain the resolution of a legal dispute and review of a judicial decision in the cases provided for by the Constitution and by law. At the same time, access to a court is not unconditional: it requires an infringed right or interest, compliance with time limits and court-fee rules, and the appropriate procedural status. The central task is to distinguish lawful procedural conditions from formalism that deprives protection of its practical substance.

In the dissenting opinion in case no. 9901/411/19 [6], the right of a territorial community and its body to challenge an act of the Verkhovna Rada of Ukraine altering administrative-territorial boundaries was substantiated. A conclusion that such an issue was not amenable to judicial determination at all would leave the community without any means of verifying compliance with the applicable procedure, whether its interests had been taken into account, and whether the constitutional guarantees of local self-government had been observed. Judicial review in this category of cases does not mean that the court itself determines the territorial structure; it verifies whether the Verkhovna Rada of Ukraine acted within its competence and in accordance with the prescribed procedure.

The dissenting opinion in case no. 806/179/16 [7] emphasised that a dispute between a city council and a body of the State Service of Ukraine for Geodesy, Cartography and Cadastre concerning implementation of a decision of a local self-government body was legal in nature. More than 250 applications concerning the incorrect determination of normative monetary valuation demonstrated that the dispute extended beyond an inter-agency disagreement and affected the rights of payers and the community's budget. In those circumstances, declining to conduct a full judicial examination neither resolves the conflict of competence nor provides an adequate legal response to a systemic violation.

The dissenting opinions in cases nos. 826/10834/14 [11], 932/7911/20 [12], and 2-a-358/11 [13] consistently challenged the practice of closing cassation proceedings as having been opened in error, or refusing review of procedural orders on the basis of a purely literal interpretation of the list of appealable decisions. The argument was that, once proceedings had been opened, the Supreme Court should determine the legal issue raised unless review was expressly prohibited by law. This applies in particular to orders of an appellate court that definitively prevent the exercise of the right to interim relief, consideration of an application, or another procedural remedy.

The dissenting opinion in case no. 420/7281/19 [9] applied a similar approach to judicial control over the enforcement of a decision and to a fine imposed on the head of a local self-government body. A substantial personal fine and a finding of non-compliance with a judicial decision have significant legal consequences; access to cassation review should therefore not depend on the narrow designation given to the procedural act. At the same time, the right to review does not call into question the binding nature of the judicial decision: it ensures examination of whether the grounds for the head's personal liability were in fact established.

The dissenting opinions in cases nos. 817/859/16 [25], 440/2379/20 [29], and 464/8720/16-a [34] critically assessed the closure of cassation proceedings, after the cases had remained before the Supreme Court for a considerable period, on the ground that the legal relations were not similar. Where proceedings had been opened, the case materials had remained under consideration for a lengthy period, and the cassation appeal raised issues concerning the application of rules in the fields of subsoil use or urban development, procedural economy and confidence in the judiciary required the case to be determined on the merits. Late closure of the proceedings not only fails to develop case-law, but also gives the parties a legitimate sense that the cassation filter is unpredictable.

The dissenting opinion in case no. 852/2a-5/24 [32] distinguished between the general three-month time limit applicable to claims brought by a public authority and the special time limit established by law for compulsory acquisition of a land plot on grounds of public necessity. Returning the claim without examining the special regulatory framework could have made it impossible to realise the public need for which the law had prescribed a distinct temporal model. A procedural time limit must be interpreted in connection with the substantive legal relationship, rather than in isolation from it.

The dissenting opinion in case no. 420/16041/23 [43] defended the right of an undertaking that had not participated in proceedings concerning the award of a preferential pension to appeal against the decision where the law placed

the obligation to reimburse the costs of paying that pension on the undertaking itself. The undertaking's formal absence from the operative part of the decision does not remove the decision's direct pecuniary effect. Due process requires that a person be joined and heard before a judicial decision determines the extent of that person's financial obligation.

In the dissenting opinion in model case no. 440/14216/23 [27-1], the disagreement concerned the refusal to join the Ministry of Social Policy of Ukraine as a third party and the court's failure, of its own motion, to join the Cabinet of Ministers of Ukraine. It was argued that, under Article 49(2) and (5) of the Code of Administrative Proceedings of Ukraine, the court must join a person where the decision may affect that person's rights or obligations, and that in a model case this requirement assumes particular importance in view of the systemic consequences contemplated by Articles 290–291 of the Code. Since, under Articles 116–117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine ensures the implementation of financial and social policy and execution of the State Budget of Ukraine, while the Ministry of Social Policy was the principal administrator of budgetary funds and the responsible implementing authority for the relevant budget programme, the decision could directly affect their powers and obligations. Their participation was necessary not in order for the court to substitute itself for the Government's budgetary discretion, but to establish the circumstances fully, ensure adversarial proceedings, and formulate a decision capable of actual enforcement in accordance with Articles 129 and 129-1 of the Constitution of Ukraine.

In the dissenting opinion in case no. 520/8206/22 [45], the admissibility of a prosecutor's appeal was substantiated in circumstances where the Pension Fund body had failed to secure effective review of a repeated clarification of a decision capable of increasing budgetary expenditure. Representation of the interests of the State was treated as a subsidiary mechanism applicable where inadequate protection by the competent body had been demonstrated. This approach does not confer on the prosecutor a general right to intervene in pension disputes, but permits participation in order to prevent a final procedural outcome which, without review, creates a substantial public financial obligation.

By contrast, the dissenting opinion in case no. 990/96/24 [28] emphasised the need to refuse to open proceedings on a claim seeking an order requiring the Verkhovna Rada of Ukraine to call an election of the President of Ukraine during martial law. Access to an administrative court presupposes a legal dispute concerning a subjective right, rather than an abstract demand that Parliament exercise a constitutional power in the manner specified by the claimant. The court should not open proceedings where the relief sought, by its nature, falls within Parliament's political and constitutional competence and is not directed at protecting an individual right of the claimant.

The dissenting opinion in case no. 990/280/24 [47] applied the same criterion to an individual's claim seeking an order requiring the High Council of Justice to consider a submission made by a meeting of judges. The claimant was not the author of the relevant submission and had not demonstrated an infringement of his own right or legally protected interest. A general reference to the authority of the judiciary or to the proper functioning of judicial power cannot substitute for *locus standi*. Effective access to a court does not amount to an *actio popularis* in every case in which a person disagrees with the activities of a public body.

The dissenting opinion in case no. 240/32892/21 [49] underlined that ensuring access to a court does not permit the court to create an exemption from payment of the court fee, not provided for by law, in respect of an appeal against an order made under Article 382 of the Code of Administrative Proceedings of Ukraine. Where the law expressly identifies the chargeable procedural act and contains no exemption, judicial creation of such an exemption effectively replaces legislative regulation. Legal certainty as regards procedural costs is a component of equal access to justice; departure from a clear statutory rule in favour of one category of applicants may create inequality for others.

Accordingly, the dissenting opinions examined distinguish between two types of procedural obstacle. The first consists of excessively formal decisions that, without a sufficient purpose, close off access to review or leave a legal dispute unresolved. The second comprises lawful conditions of access: the existence of an infringed right, appropriate status, time limits, and the court fee. The court's task is not to remove all procedural restrictions, but to apply them foreseeably and proportionately.

3. Constitutional Limits of Judicial Power, Separation of Powers, and the Temporal Effect of Normative Legal Acts

An administrative court reviews the lawfulness of public power, but is itself bound by the Constitution and the law. Reliance on the principles of the rule of law, the direct effect of the Constitution, and the precedence of a legal act of higher legal force must not develop into an informal declaration that a law is unconstitutional, the revival of a repealed provision, or the retrospective deprivation of legal effects produced by a normative legal act that was in force. Otherwise, judicial protection of one person is achieved at the expense of legal certainty and the competence of another constitutional body.

The dissenting opinion in model case no. 240/4937/18 [3] rejected the possibility of the court directly reviving an earlier version of Article 39 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster” of 28 February 1991, no. 796-XII (hereinafter, Law no. 796-XII), following a decision of the Constitutional Court of Ukraine. It was emphasised that an administrative court could not itself determine which particular earlier provision had automatically regained effect unless the Constitutional Court of Ukraine had expressly so held. For the proper resolution of the dispute, it was proposed that the court take account of the applicable special regulatory framework, the participation of the Cabinet of Ministers of Ukraine, and, where necessary, use the prescribed mechanism for referring the matter to the Constitutional Court of Ukraine.

The dissenting opinion in case no. 800/235/17 [4] drew a similar boundary in relation to the Law of Ukraine “On Government Cleansing”. Until a law or an individual provision of it has been declared unconstitutional, a court may not decline to apply it solely on the basis of a declaratory or insufficiently reasoned assessment that it is incompatible with the Constitution of Ukraine. At the same time, Article 7(4) of the Code of Administrative Proceedings of Ukraine provides that a court which reaches a reasoned conclusion that a law or other legal act is contrary to the Constitution of Ukraine shall not apply that act, shall apply the provisions of the Constitution of Ukraine as provisions having direct effect, and, after delivering its decision, shall initiate the procedure of constitutional review prescribed by law. The court therefore does not substitute itself for the Constitutional Court of Ukraine, but determines the applicability of the provision in the particular case within the procedure laid down by law.

The dissenting opinion in model case no. 160/8324/19 [5] examined another manifestation of the same problem: the effective revival of provisions of a resolution of the Cabinet of Ministers of Ukraine that had been declared invalid. A judicial decision must impose an effective and enforceable obligation on a public authority on the basis of the regulatory framework in force. Requiring a body to act under a subordinate normative act that has been declared invalid may create a new regulatory model established by neither the Government nor the legislature.

The dissenting opinion in case no. 560/8064/22 [18] defended the competence of the legislature and the Cabinet of Ministers of Ukraine to determine, in 2022, the procedure and amount of lump-sum cash assistance to veterans in the light of martial law and defence needs. It was emphasised that legislative amendments adopted after the beginning of the full-scale invasion, together with the special budgetary regulation applicable in 2022, could not be disregarded through the mechanical application of legal conclusions formulated before the relevant legislative and budgetary framework was changed in 2022. The constitutional duty to provide social protection to service members and veterans operates together with the requirements of Articles 17 and 95 of the Constitution of Ukraine concerning defence and public finances.

In the dissenting opinion in model case no. 440/14216/23 [27-2], the disagreement concerned the non-application of the Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning a Lump-Sum Cash Payment to War Veterans and Victims of Nazi Persecution” of 20 March 2023, no. 2983-IX, and Resolution of the Cabinet of Ministers of Ukraine no. 754 of 21 July 2023, which introduced an annual lump-sum cash payment for Independence Day in accordance with the procedure and amounts determined by the Government within the relevant budget appropriations. It was emphasised that application of Article 7(4) of the Code of Administrative Proceedings of Ukraine requires the court to identify clearly the specific provision of the Constitution of Ukraine from which the right to the payment and its amount directly arise; otherwise, declining to apply the law in force and requiring the authority to act under the previous regulatory framework would create a risk of the court constructing a new regulatory model. Separate attention was drawn to the requirements of separation of powers, martial law, defence, budgetary balance, equality among recipients, and enforceability of the decision, enshrined, inter alia, in

Articles 6, 17, 21, 24, 83, 85, 92, 95, 113, 116, 117, 129, 129-1, 147, and 152 of the Constitution of Ukraine. As a matter of terminology, Law no. 2983-IX established specifically a “lump-sum cash payment” for Independence Day, and it should therefore not, without proper justification, be equated with the previous mechanism of lump-sum cash assistance payable by 5 May. This approach does not deny social protection to veterans, but requires its specific mechanism to be defined by legislation, equal for all recipients, and capable of actual implementation.

A subsequent dissenting opinion in the same model case no. 440/14216/23 [27] disagreed with the initiation of a constitutional petition concerning the new legislative mechanism for the annual Independence Day payment. A referral to the Constitutional Court of Ukraine should not be abstract or based solely on the fact that the new regulatory framework differs from the previous one. The court should have assessed whether the applicable provision genuinely gave rise to a constitutional issue in the particular case and whether the referral might unjustifiably suspend or disrupt the payment mechanism for a substantial number of persons.

The dissenting opinion in case no. 9901/425/21 [31] analysed the constitutional status of the President of Ukraine in the field of national security and the legal consequences of quashing a decree bringing into effect a decision of the National Security and Defence Council of Ukraine concerning sanctions. Even where unlawfulness is established, the court must take account of the nature of the act, its temporal operation, and the public interest in the stability of national security measures. Retrospectively eliminating all consequences of the decree may exceed what is necessary to protect the claimant; in appropriate cases, the proper remedy is to terminate the act's operation for the future.

The dissenting opinions in cases nos. 240/1121/24 [38], 240/706/24 [50], and 580/5022/24 [51] consistently rejected the possibility of applying Articles 50 and 54 of Law no. 796-XII in the version introduced by Law of Ukraine no. 230/96-VR while a legislative framework remained in force, including the version of Article 54 introduced by Law of Ukraine no. 1584-IX. A decision of the Constitutional Court of Ukraine declaring unconstitutional the delegation to the Cabinet of Ministers of Ukraine of the power to determine the minimum amounts of the relevant pensions does not, by itself, empower an administrative court to revive an earlier version of the law and set pension amounts at six or eight times the minimum old-age pension. The legislature enacted new regulation; assessment of its constitutionality falls within the competence of the Constitutional Court of Ukraine, while non-application of the relevant provision in an individual case is permissible only under the conditions and in accordance with the procedure laid down in Article 7(4) of the Code of Administrative Proceedings of Ukraine.

The dissenting opinion in case no. 240/1202/25 [48] extended this proposition to provisions of the Law of Ukraine “On the State Budget of Ukraine for 2025” and a resolution of the Cabinet of Ministers of Ukraine governing payment of certain pensions during martial law. A mere assumption that an act in force may be incompatible with the Constitution of Ukraine is not a sufficient basis for declining to apply it. Where a court reaches a properly reasoned conclusion that a law or other legal act is contrary to the Constitution of Ukraine, it must follow the procedure laid down in Article 7(4) of the Code of Administrative Proceedings of Ukraine; in all other cases, the law enjoys a presumption of constitutionality.

The dissenting opinion in case no. 520/5814/24 concerning referral of the case to a chamber [52], and the dissenting opinion in the same case concerning the final judgment [55], examined the temporal effect of Resolution of the Cabinet of Ministers of Ukraine no. 481 of 12 May 2023, “On Repealing Subparagraph 1 of Paragraph 3 of the Amendments to Resolutions of the Cabinet of Ministers of Ukraine Approved by Resolution of the Cabinet of Ministers of Ukraine no. 103 of 21 February 2018 and Amending Paragraph 4 of Resolution of the Cabinet of Ministers of Ukraine no. 704 of 30 August 2017”, which established a fixed calculation base of UAH 1,762. Under Article 265(2) of the Code of Administrative Proceedings of Ukraine, a normative legal act ceases to have effect when the relevant judicial decision becomes final. Disregard of that rule may lead to retrospective denial of the legal effects of an act that was in force at the material time and create a risk of incidental review outside the procedure established by the Code.

The dissenting opinion in case no. 200/2309/25 [54] defended the binding force of the laws on the State Budget of Ukraine then in force, which established a special subsistence minimum of UAH 2,102 for determining a judge's basic salary. The Law of Ukraine “On the Judiciary and the Status of Judges” lays down the formula, while the law on the State Budget specifies the monetary indicator for the relevant year. Refusal to apply that indicator in the absence of a decision of the Constitutional Court of Ukraine undermines the coherence of the legislative framework;

departure from a conclusion of the Grand Chamber of the Supreme Court without referring the case in the prescribed manner additionally impairs procedural certainty.

All of these positions rest on a shared understanding of the rule of law. The rule of law is not opposed to the principle of legality; rather, it requires judicial power to operate within the constitutional procedure laid down for it. A court should not leave an individual without protection, but the remedy cannot consist in informally setting aside a law, reviving a provision that is no longer in force, retrospectively depriving a subordinate normative act of effect, or assuming the discretion of a constitutional body.

4. Social Rights, the Budgetary System, and the Requirements of Article 95 of the Constitution of Ukraine

Social rights possess direct constitutional value, but their implementation generally requires legislative definition of the applicable conditions, amounts, and sources of funding. In large-scale social disputes, judicial interpretation affects not only the claimant, but also thousands of persons, the State and local budgets, defence expenditure, and the capacity to meet obligations already established. Article 95 of the Constitution of Ukraine requires social justice to be assessed within the budgetary system as a whole, rather than solely by maximising the payment in a single case.

The dissenting opinion in case no. 240/10153/19 [8] proposed applying the interpretation most favourable to the individual of an ambiguously worded two-year restriction on receipt of lump-sum assistance following a change in a service member's disability group. Where the law admits of several reasonable interpretations and the matter concerns the consequences of an injury sustained while defending the Motherland, the risk arising from legislative uncertainty should not be borne by the individual. At the same time, this approach differs from creating a new payment: it concerns choosing between possible meanings of a provision currently in force.

The dissenting opinion in case no. 480/4241/18 [15] emphasised the need to apply the conditions for the award of a military long-service pension in force following the 2011 reform. The social purpose of the law does not permit the new requirement concerning the necessary calendar service to be disregarded. The legislature may alter the conditions governing entitlement to a future payment, provided that it does not deprive the individual of a pension already awarded and observes constitutional guarantees.

The dissenting opinion in case no. 380/1907/23 [23] considered the time limit for bringing claims concerning certificates required for recalculation of military pensions in a broader context. Allowing claims to be brought without any time limit may create substantial retrospective budgetary liabilities, while an excessively strict time limit may deprive a person of a right whose exercise depends on action by a State authority. The proper approach must take account of the nature of any continuing violation, the moment when the person became aware of it, the foreseeability of the financial consequences, and the State's capacity to enforce the decision during martial law.

The dissenting opinion in case no. 300/3435/21 [30] emphasised the need for precision in the operative part of a decision in a dispute concerning a pension supplement for service exceeding the prescribed period. Even where the substantive outcome for the claimant remains unchanged, quashing the decisions of the lower courts and adopting a similar decision requires explanation. In a large category of repetitive disputes, every formulation becomes guidance for Pension Fund bodies and courts, and imprecision may therefore generate new proceedings and additional budgetary expenditure.

The dissenting opinion in case no. 460/19229/22 [35] proposed a narrow interpretation of the concept of a non-working pensioner for the purposes of the increase under Article 39 of Law no. 796-XII. Pensioner status should be linked to a pension awarded upon the materialisation of the social risk of old age, disability, or another lawful ground, rather than encompassing any person who formally receives a pension payment. Expanding the class of recipients without a clear legislative basis alters the scope of the public obligation.

The dissenting opinions in cases nos. 280/3296/24 [41] and 200/5836/24 [42] analysed indexation of pensions awarded by reference to an average-wage indicator that already exceeded the indicator obtained through successive application of Government coefficients. Indexation is intended to compensate for depreciation of the underlying indicator, not mechanically to multiply every individual indicator regardless of its level. The opposite

approach may confer on persons with a more recent and higher calculation base an additional advantage not contemplated by the purpose of indexation and may impair equality between generations of pensioners.

The dissenting opinions in cases nos. 240/1121/24 [38], 240/706/24 [50], and 580/5022/24 [51] connected the budgetary dimension with the limits of constitutional jurisdiction. Judicially awarding pensions amounting to six or eight times the minimum old-age pension is not a neutral restoration of a right where the law in force prescribes a different mechanism. Such a conclusion simultaneously establishes a new normative standard for a substantial number of persons and increases expenditure without a decision by the legislature. The dissenting opinion in case no. 580/5022/24 [51] emphasised in particular that Article 95 of the Constitution of Ukraine requires the fair allocation of limited resources among all public needs, rather than preferential satisfaction of one group through judicial revival of a provision no longer in force.

The dissenting opinion in case no. 240/1202/25 [48] assessed restrictions imposed on certain pensions in 2025 during martial law. The Law on the State Budget of Ukraine and the act of the Cabinet of Ministers of Ukraine adopted to implement it established a temporary payment regime. A court may review their application, but it should not decline to apply the law in force on the basis of its own assessment of a fair pension amount. The balance between an individual's proprietary interest and the needs of defence, security, and other recipients of budgetary funds belongs primarily to the democratic budgetary process.

The dissenting opinion in case no. 200/2309/25 [54] and the dissenting opinions in case no. 520/5814/24 [52], [55] applied a similar approach to the remuneration of judges, retired judges, and service members. The calculation base is not a technical detail but an element of an expenditure obligation. Judicial substitution of a higher indicator in a substantial number of cases may materially alter the burden on the budget. A law or subordinate normative legal act in force must be applied unless there are statutory grounds for declining to apply it in the particular case and unless it has ceased to have effect in the prescribed manner.

In the dissenting opinion in case no. 460/25663/23 [56], the budgetary dimension arose through the distinction between the award of a new type of pension and a transfer within the same social risk. Treating every transfer as an initial award, with application of a new average-wage indicator, increases the payment not only for the individual concerned but for the entire analogous category. The type of pension must therefore be determined by the legal nature of the insured risk, rather than merely by the title of the law under which the payment is calculated.

The dissenting opinions do not deny priority protection to service members, persons affected by the Chornobyl disaster, persons with disabilities, veterans, or retired judges. They require a distinction to be drawn between interpreting an existing guarantee in favour of the individual and judicially creating a new amount or payment mechanism. The former gives effect to effective protection; the latter may infringe Article 95 of the Constitution of Ukraine, equality among recipients, and the competence of the legislature.

5. The Public Interest in Disputes Concerning Land, Urban Development, Natural Resources, and Cultural Heritage

In disputes concerning land, subsoil, urban development, the environment, and cultural heritage, the consequences of a judicial decision are rarely confined to the parties. Natural resources are objects of the property rights of the Ukrainian people, spatial planning affects the safety and quality of life of the community, and cultural heritage is preserved for present and future generations. The court must therefore examine not only formal compliance with procedure, but also whether the circumstances were established in full, whether the authority acted within its competence, the preventive nature of the regulatory framework, and the potentially irreversible impact of the decision.

The dissenting opinion in case no. 817/1780/17 [16] distinguished between an extract from the State Land Cadastre and an administrative decision. An extract generally reflects information already entered and does not, in itself, create that information; this does not, however, deprive a person of the possibility of challenging the actions or omissions through which the cadastral data were incorrectly formed. This classification ensures that the dispute has the proper subject matter without artificially attributing the characteristics of an individual act to an informational document.

The dissenting opinion in case no. 823/1090/18 [19] defended the constitutional autonomy of local self-government in relations concerning State architectural and construction supervision. A State body may review the lawfulness of decisions of an authorised community body only within the competence conferred on it by law, but may not treat local self-government as a subordinate tier of the executive. An incorrect understanding of this model affects not only the dispute over competence, but also property rights and an individual's access to due process.

The dissenting opinion in case no. 826/10517/17 [20] emphasised the constitutional formula that “property entails responsibility”. Registration of title or possession of a technical passport for a temporary structure does not legalise occupation of a pavement, use of a land plot without documents evidencing title, or operation of a facility without the required authorisation procedure. Protection of a private proprietary interest cannot displace the community's interest in the safe and unobstructed use of public space.

In the dissenting opinion in case no. 826/15864/17 [21], orders listing a property as a newly identified cultural heritage site and entering it in the State Register of Immovable Monuments were treated as acts having normative characteristics. Their provisions are addressed to an indeterminate class of persons, operate over time, and are not exhausted by a single act of implementation. The applicable challenge procedure, notification of interested persons, and stability of the protection regime depend on the correct classification. Annulment of such an act in an individual dispute without the special procedure may affect the public interest in preserving cultural heritage.

The dissenting opinion in case no. 160/7116/19 [22] substantiated the special nature of State control over the use and protection of land. Where an inspection is aimed at identifying the actual user and the condition of a land plot, mechanical application of the general rules governing supervision in the sphere of economic activity may render such control impossible before the relevant entity has even been identified. Protecting land as a public resource requires account to be taken of the subject matter of the control, rather than only the status of the potential land user.

The dissenting opinion in case no. 340/11/23 [26] connected the public interest with the protection of orphans and children deprived of parental care. Failure to pay the statutory lump-sum assistance to school leavers concerned a vulnerable group whose members may objectively lack the resources needed to seek individual judicial protection. Where the inaction of the competent authority has been demonstrated, the prosecutor may represent the interests of the State, the substance of which lies in the State's performance of its positive obligation to provide social protection to children.

The dissenting opinion in case no. 320/39441/23 [40] proposed determining the starting point of the time limit for a prosecutor's claim concerning a special subsoil-use permit by reference to the actual possibility of becoming aware of the violation. Information obtained in criminal proceedings may be restricted and is not equivalent to proper knowledge on the part of the prosecutor authorised to bring an administrative claim. Formal calculation of the time limit from the date on which the permit was issued may deprive the State of the possibility of reviewing the lawfulness of the disposition of a resource where the violation became known only later.

The dissenting opinion in case no. 320/10031/24 [53] developed this approach through the preventive principle. Subsoil belongs to the Ukrainian people, and the consequences of an unlawful special permit may be irreversible. The Aarhus standards on access to justice and the precautionary principle require particularly careful assessment of time limits and procedural grounds for leaving a claim without consideration. Limitation rules should not automatically legalise continuing use of a natural resource where the court has not established when the prosecutor acquired proper knowledge or the nature of the possible violation.

The dissenting opinion in case no. 260/9623/23 [44] emphasised the principle of official establishment of all circumstances in an urban-development dispute. The courts should have examined the current version of the Uzhhorod General Plan, the findings of the construction and technical expert examination, hydrogeological risks, requirements applicable to the aerodrome vicinity, the land-withdrawal procedure, and the need for an environmental impact assessment. Where there is potential impact on aviation safety, neighbouring buildings, and the environment, refusal to remit the case for fresh examination leaves unanswered issues of importance to an indeterminate class of persons.

The dissenting opinion in case no. 380/29645/23 [46] similarly criticised reducing the examination of a dispute concerning a declaration and the right to carry out construction works to isolated procedural aspects. The court

should have assessed the legally relevant arguments advanced by the control authority, the relationship between the transitional provisions of urban-development legislation, the actual characteristics of the facility, and the possibility of legalising the construction. The principle of official establishment of the circumstances does not permit an outcome to remain in force solely because the authority incompletely formulated one of its reasons where the materials indicate a possible threat to legality and safety.

In the dissenting opinion in case no. 852/2a-5/24 [32], the public interest lay in implementing a project for which the law permits compulsory acquisition of property on grounds of public necessity. At the same time, that interest does not remove the owner's right to due process, compensation, and judicial review. The special time limit and the stages of the procedure must therefore be interpreted so as neither to obstruct a lawful public need nor to weaken the owner's guarantees.

The positions examined establish a single standard: in cases concerning public resources, the court should not automatically side with the State authority, but nor may it assess the dispute as an ordinary bilateral property conflict. It must establish whether a broader public interest exists, who is authorised to represent it, which risks are irreversible, and whether the remedy selected strikes a proper balance between private rights and the public good.

6. Administrative Procedure, State Control, Sanctions, and Proportionality

The lawfulness of an administrative act is determined by the authority's competence, compliance with procedure, proper establishment of the facts, consistency with the purpose of the power, and proportionality of the consequences. Not every procedural defect, however, automatically requires the act to be quashed. The court must assess the materiality of the violation, its impact on the outcome, the possibility of remedying it, the rights of interested persons, and the public interest in the stability of a lawful administrative decision.

The dissenting opinion in case no. 826/5575/17 [1] expressed the view that breach of individual procedural requirements in the administrative review of registration actions should not automatically nullify an outcome justified on the merits. The court should have examined whether the defect affected the claimant's rights and whether a different procedural decision could have produced a different lawful outcome. Excessive legal purism, or formalism, may restore a registration status that is itself contrary to law and shift the consequences of an administrative error onto other participants in the legal relationship.

The dissenting opinion in case no. 160/9578/18 [10] distinguished between the court's power to select an effective remedy and the prohibition on substituting itself for administrative discretion. Where, after a refusal to extend a permit has been found unlawful, only one lawful decision remains possible and all necessary circumstances have been established, the court may require the authority to adopt a favourable decision. Where the authority must assess additional facts or choose between several lawful options, the proper remedy is reconsideration in accordance with the court's legal assessment.

The dissenting opinion in case no. 805/430/18-a [14] assessed a fine exceeding seven million hryvnias for breaches of labour legislation in the light of the sanction's penal character. Its substantial amount, punitive purpose, and serious consequences require safeguards commensurate with the criminal limb of Article 6 of the European Convention on Human Rights: a clear definition of the elements of the offence, proper evidential substantiation, consideration of fault, and proportionality. The automatic imposition of a fine calculated as a multiple, without assessing the nature of the violation, may turn an administrative sanction into excessive punishment.

The dissenting opinion in case no. 640/9004/20 [17] analysed a fine imposed by the National Bank of Ukraine in the field of financial monitoring. Insufficient detail in the reasons concerning the precise amount of the sanction should not be assessed in isolation from the violation established, the risks of money laundering, and the regulator's specialised competence. The court should examine whether the defect in reasoning could be remedied without quashing the entire decision and whether annulment would cause disproportionate harm to the public interest in the stability of the banking system and the prevention of laundering the proceeds of crime.

The dissenting opinion in case no. 420/3179/22 [36] substantiated the possibility for the head of a State architectural and construction control body to delegate the power to impose fines to a deputy by means of an internal administrative act. A requirement that the head personally exercise every power must follow expressly from the law. In the absence of such a prohibition, the organisational allocation of responsibilities ensures continuity and

effectiveness in the body's work, and the court should not create a restriction on competence that the legislature did not establish.

In the dissenting opinion in case no. 823/1090/18 [19], the issue of competence was linked to the prohibition on administratively subordinating local self-government to a State body beyond the limits of lawful supervision. In the dissenting opinion in case no. 990/280/24 [47], the same requirement was applied to judicial intervention in the activities of the High Council of Justice: a court may review an infringement of a subjective right, but may not require a constitutional body to act on a submission made by another entity at the request of a person who lacks the requisite procedural interest. Limits of competence are reciprocal: the administration may not act beyond the law, and the court may not assume its function.

The dissenting opinion in case no. 990/155/24 [39] treated the requirement of reasons as applicable not only to the administrative act, but also to the judicial decision quashing it. Declaring a decision of a public body unlawful requires a response to its principal arguments and consideration of the previous judicial assessment of the same facts. Otherwise, judicial review becomes less demanding of its own procedure than of that of the administrative authority.

Comparison of these positions demonstrates that due administrative procedure is not an end in itself. It ensures accurate establishment of the facts, participation of interested persons, control of discretion, and proportionality. Annulment of an act is justified where the violation affected, or could materially have affected, the outcome or the person's rights. Where the defect does not alter the only lawful outcome, the court should consider a less burdensome means of restoring legality without destroying an outcome that is lawful in substance.

7. Consistency of Case-Law, Departure from Legal Conclusions, and Responsibility for Systemic Consequences

Consistency of case-law does not mean that every conclusion of the Supreme Court is immutable. Departure is necessary where an earlier interpretation has objectively lost its legal relevance, is inconsistent with amended legislation, cannot be reconciled with a decision of the Constitutional Court of Ukraine, or produces unacceptable systemic consequences. The mere existence of another position, a change in the composition of the court, or a desire to achieve a more favourable outcome is not, however, sufficient. Departure requires precise identification of the earlier conclusion, similarity of the legal relations, reasons why that conclusion is no longer suitable, and formulation of a new general rule.

The dissenting opinion in case no. 240/10153/19 [8] objected to departure from a protective interpretation of the time limit for receiving lump-sum assistance without sufficient explanation of the legislative purpose. The dissenting opinion in case no. 817/1780/17 [16] required the subject matter of the challenge to be correctly identified so that a new conclusion would not be based on the erroneous classification of an informational document. The dissenting opinion in case no. 640/9004/20 [17] assessed the consequences of departure for banking supervision and financial monitoring. These examples demonstrate that departure must take account not only of the wording of the rule, but also of the function of the relevant legal institution.

The dissenting opinions in cases nos. 380/1907/23 [23], 440/14216/23 [27-1], [27-2], [27], 300/3435/21 [30], 240/19209/21 [37], 280/3296/24 [41], 200/5836/24 [42], and 460/25663/23 [56] devoted particular attention to large-scale social disputes. A new conclusion in such a case becomes guidance for a substantial number of similar proceedings and affects administrative practice and the budget. The court must therefore assess the transitional period, the class of persons concerned, feasibility of implementation, equality among recipients, and the relationship with the budgetary regulation in force. Foreseeability is an element not only of legal certainty, but also of the genuine enforceability of social guarantees.

In the dissenting opinion in case no. 420/3179/22 [36], the disagreement concerned departure, without sufficient basis in the statutory text, from the conclusion on delegation of powers. In the dissenting opinion in case no. 420/16041/23 [43], it concerned departure from the conclusion recognising the right of an undertaking to appeal against a decision that directly created a financial obligation for it. In both cases, the new position narrowed the practical possibility for a public authority to exercise a lawful power and for an interested person to exercise a

procedural right. The change in case-law should have been justified not by a formal distinction between the cases, but by a persuasive interpretation of the substantive and procedural rules.

The dissenting opinion in case no. 200/2309/25 [54] emphasised the impermissibility of a de facto departure from a legal conclusion of the Grand Chamber of the Supreme Court without applying Articles 346–347 of the Code of Administrative Proceedings of Ukraine. The referral procedure is an institutional guarantee of consistency within the judicial system. Failure to observe it creates a situation in which a formation of the Supreme Court lacking the power to depart from a conclusion of the Grand Chamber effectively neutralises that conclusion outside the prescribed procedure.

The dissenting opinions in case no. 520/5814/24 [52], [55] demonstrate another risk: a new conclusion may, in effect, alter the temporal operation of a normative legal act. In such a situation, the court must explain not only the substantive advantage of another calculation base, but also the compatibility of the new approach with Article 265(2) of the Code of Administrative Proceedings of Ukraine, the presumption of lawfulness of an act in force, and the legal consequences for legal relations already completed.

Proper consistency of case-law is achieved not through the number of references to previous judgments, but through consistency of method. The court should apply uniform criteria for determining similarity of legal relations, observe the competence of the different formations of the Supreme Court and the referral procedure established by the Code of Administrative Proceedings of Ukraine, distinguish between a change in the law and a change in its interpretation, assess legitimate expectations, and determine the point from which a new approach applies. A dissenting opinion preserves alternative arguments for that dialogue and enables future case-law to return to the issue without losing legal reasoning that has already been formulated.

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62. TRANSPARENCY STATEMENT ON THE USE OF ARTIFICIAL INTELLIGENCE
63. In preparing this Review, artificial intelligence tools were used as auxiliary instruments for structural editing, linguistic and stylistic refinement, verification of the logical coherence of the presentation, identification of possible repetition and internal inconsistencies, and the formulation of alternative versions of individual passages. Under the GAIDeT (Generative AI Delegation Taxonomy) approach [Additional Literature and the Author's Materials, no. 2], such use was assistive in nature and did not

extend to determining the research concept, independently assessing the sources in legal terms, or formulating the final conclusions.

64. The research concept, selection and examination of the dissenting opinions, legal interpretation of the sources, assessment of the reasoning expressed in them, academic conclusions, and final version of the text are attributable to the author. All outputs obtained with the assistance of artificial intelligence tools were verified against the primary sources, critically evaluated, and accepted, modified, or rejected by the author.

65. AUTHOR'S NOTE

66. This Review is an original academic and analytical work prepared in the exercise of a judge's right to engage in academic activity. It does not constitute an official review of case-law, an official interpretation of legislation, or a statement of the official position of the Supreme Court or of the Cassation Administrative Court within the Supreme Court.

67. The source base of the Review comprises 58 dissenting opinions delivered by the author individually or jointly with other judges of the Cassation Administrative Court within the Supreme Court between 25 April 2018 and 13 May 2026 in 55 cases within the administrative jurisdiction. This criterion defined the scope of the materials selected, and the Review therefore does not claim to provide an exhaustive account of all dissenting opinions of Supreme Court judges or of all case-law concerning the issues addressed.

68. A dissenting opinion reflects the individual legal position of a judge or the joint position of the judges who signed it, but does not alter the legal force of the relevant judicial decision and does not constitute an official legal position of the Supreme Court. The systematisation of the arguments, identification and comparison of recurring methodological approaches, and assessment of the practical, constitutional, and societal significance of the dissenting opinions are the author's own.

69. The generalisations set out in the Review are not a substitute for consulting the full texts of the dissenting opinions and the judicial decisions in respect of which they were delivered. The assessments expressed do not extend to cases currently pending before the courts, do not predetermine the author's approach to the resolution of other cases, and are not intended to influence their determination.

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