**Summary to the Decision of the Second Senate of the Constitutional Court No. 10-r (ІІ)/2023 dated November 22, 2023 in the case upon the constitutional complaints of Olha Doroshko, Mykyta Yevstifeiev, Ivan Kushaba, and Volodymyr Yakimenko on the conformity of Articles 19.6.1, 19.6.5, 389.3.2 of the Civil Procedure Code of Ukraine with the Constitution of Ukraine (constitutionality) (on guaranteeing the right to judicial protection in minor disputes)**

O.Doroshko, M.Yevstifeiev, I.Kushaba, V.Yakimenko applied to the Constitutional Court with petitions to verify the compliance of Articles 19.6.1., 19.6.5, 389.3.2 of the Civil Procedure Code (hereinafter - the Code) with the Constitution (constitutionality).

 According to Articles 19.6.1, 19.6.5 of the Code, for the purposes of the Code, minor cases are:

“1) cases in which the value of the claim does not exceed one hundred of the subsistence minimum for able-bodied persons;

<…>

5) cases on the protection of consumer rights, in which the value of the claim does not exceed two hundred and fifty amounts of the subsistence minimum for able-bodied persons”.

According to Article 389.3.2 of the Code, the following are not subject to cassation appeal:

„2) court decisions in minor cases and in cases with a claim value not exceeding two hundred and fifty amounts of the subsistence minimum for able-bodied persons, except in cases where:

а) the cassation appeal concerns the matter of law that is of fundamental importance for the formation of a unified law enforcement practice;

b) a person who files a cassation appeal, in accordance with this Code, is deprived of the opportunity to refute the circumstances established by the contested court decision, when considering another case;

c) the case is of significant public interest or is of exceptional importance for the party to the case who files a cassation appeal;

d) the court of first instance mistakenly classified the case as minor one”.

The Fundamental Law regulates not only the basic principles of judicial proceedings, but also the types of litigation, including minor disputes.

Article 131-2.5 of the Fundamental Law establishes the concept of “minor disputes”.

The Constitutional Court takes into account the fact that Articles 19.6.1, 19.6.5 of the Code and other articles of the Code use the term “minor cases”, and Article 131-2.5 of the Constitution uses the term “minor disputes”.

From the analysis of the provisions of the Code, it follows that these provisions develop, specify and detail the provision of Article 131-2.5 of the Constitution regarding the judicial review of minor disputes.

Evaluating Articles 19.6.1, 19.6.5 of the Code for compliance with the Constitution, the Constitutional Court takes into account the fact that, according to Article 19.6 of the Code, the value of the claim is one of the criteria for classifying a civil case as minor one.

According to Article 175.3.3 of the Code, the statement of claim must contain, in particular, an indication of the value of the claim, if the claim is subject to a monetary assessment.

According to Article 19.4.1 of the Code, recognition of a case as minor one, as a general rule, results in its consideration in the order of simplified legal proceedings.

According to Article 275 of the Code, the court considers cases in the order of simplified legal proceedings within a reasonable period of time, but not more than sixty days from the day of the initiating of the proceedings in the case.

Consideration of the case in the order of simplified claim proceedings is carried out by the court in accordance with the rules established by the Code for consideration of the case in the order of general claim proceedings, with the features defined in Chapter 10 of the Code, and without notification of the parties based on the materials available in the case, in the absence of a request from any of the parties about other things (Articles 279.4, 279.5 of the Code).

The Constitutional Court, establishing the substantial relationship between Article 129.2 of the Constitution, which defines such basic principles of judicial proceedings as the publicity of the judicial process and its full recording by technical means (paragraph 6) and reasonable terms of consideration of the case by the court (paragraph 7), in the context of the subject of constitutional review in this proceeding, it follows from the fact that a person exercising his constitutional right to judicial protection (Article 55 of the Constitution) is primarily interested in observing a reasonable period of time for the court to consider his case.

The Constitutional Court takes into account that, when resolving the procedural issue of consideration of the case in the order of simplified or general legal proceedings, the court takes into account not only the value of the claim in a civil case, but also a number of other circumstances.

The Constitutional Court also takes into account the fact that the shortening of the time period for court consideration and other procedural features of the resolution of minor disputes have the effect of reducing court costs for a person who exercises his constitutional right to judicial protection, which in general facilitates access to justice and the very possibility of exercising it the right guaranteed by the provisions of Article 55 of the Constitution.

In this Decision, the Constitutional Court of Ukraine concludes that the introduction of the category of minor cases in civil proceedings has a legitimate purpose, that the application in Articles 19.6.1, 19.6.5 of the Code of such a criterion for assigning a case to the category of minor cases, such as the value of the claim, does not contradict the provisions of the Articles 55.1, 129.2 of the Constitution.

The state, exercising its discretion to establish in the procedural law the amount of the value of the claim as a criterion for classifying the case as a minor one, is obliged to adhere to constitutional principles and take into account the requirement of the legitimacy of the purpose when applying such a legal means of classifying civil cases as minor, such as the value of a claim, and adhere to the principle of proportionality.

The Constitutional Court considers that the amount of the claim value defined in Articles 19.6.1, 19.6.5 of the Code as a criterion for assigning the case to the category of minor one does not correspond to the understanding of the case and the dispute in it as minor.

Evaluating Article 19.6.5 of the Code, the Court recognises the presence for the Verkhovna Rada of Ukraine of the powers to adopt laws that change the regulation of procedural relations involving consumers. However, the legislative activity of the Verkhovna Rada of Ukraine to introduce such changes and the content of the relevant laws must meet the constitutional requirements, in particular the requirement of legal certainty in the aspect of predictability, motivation, and consistency of legislative regulation of social legal relations.

The Court considers that Article 19.6.5 of the Code, whereby the cases on the protection of consumer rights, in which the value of the claim does not exceed two hundred and fifty amounts of the subsistence minimum for able-bodied persons, are classified as minor cases, does not meet the requirement of legal certainty and is inconsistent with the constitutional provisions and international commitments of Ukraine to ensure a high level of consumer rights protection.

The provisions of the Code may establish restrictions on the exercise of the right to cassation appeal of court decisions, but such restrictions must be based on the provisions of the law, which are clear in their content and predictable in the consequences of their application, and have a legitimate purpose and be proportionate.

Compliance with the principle of finality of the court decision *(res judicata)* is essential to ensure respect for the court, its decisions and the effectiveness of the entire justice system in a state governed by the rule of law; compliance with the principle of finality of the court decision *(res judicata*) consists, in particular, in the fact that none of the participants in the case or other persons legally interested in the consideration of the case has the right to demand a cassation review of a final and binding court decision only for the re-hearing of the case and the adoption of a new one court decision.

Review in the cassation procedure of court decisions delivered by the courts of the first and appellate instances will result in an increase in court costs and duration of consideration of civil cases that are recognised as minor ones by the criterion of the value of the claim or another criterion. The mentioned circumstances reduce the effectiveness of cassation review - one of the components of the mechanism of judicial protection.

Therefore, the regulation of procedural relations in the manner of determining in the Code the grounds for cassation review of court decisions delivered by courts of first instance and appellate instance is possible as an exception and only in the case when it is determined by needs that are significant for the effectiveness and efficiency of justice, in particular, the need for a decision by the Supreme Court as the highest court in the judicial system of Ukraine on a complex legal issue, which is of fundamental importance for the formation of uniform law enforcement practice by the courts.

Such a “filter” established in Article 389.3.2 of the Code for cassation review of court decisions delivered by courts of first instance and appeals, such as the insignificance of the case, is not an insurmountable obstacle for a person's access to the court of cassation.

Thus, the Constitutional Court declared Article 389.3.2 of the Civil Procedure Code as conforming to the Constitution (constitutional).

Articles 19.6.1., 19.6.5 of the Code of Civil Procedure are declared as not in conformity with the Constitution (are unconstitutional), they will expire six months after declaring this Decision by the Constitutional Court.

The Verkhovna Rada shall bring the normative regulation established by Articles 19.6.1., 19.6.5 of the Civil Procedure Code of Ukraine into compliance with the Constitution and this Decision.

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