**Summary to the Decision of the Second Senate of April 7, 2021 No.1-r(II)/2021 in the case upon the constitutional complaint of citizen Oleksandr Diachenko and other citizens of Ukraine on the compliance of paragraph 4.13 of Section I of the Law of Ukraine "On Amendments and Repeal of Certain Legislative Acts of Ukraine" of December 28, 2014 No.76–VIII with the Constitution of Ukraine (constitutionality)**

Citizens of Ukraine (a total of 62 persons) applied to the Constitutional Court to consider the issue of compliance of paragraph 4.13 of Section I of the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII with the Constitution (constitutionality).

According to paragraph 4.13 of Section I of the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII (hereinafter - the Law No.76–VIII), the text of Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796–XII (hereinafter – the Law No.796–XII) reads as follows:

"Disability pensions due to injury or illness, and survivors' pensions due to the Chornobyl disaster may be granted at the request of a citizen from earnings earned for work in the exclusion zone in 1986-1990, in the amount of compensation for actual losses, which is determined in accordance with the law.

In all cases, the average monthly salary for calculating the pension for work in the exclusion zone in 1986-1990 may not exceed 3.0 thousand karbovantsiv.

The conditions, procedure for granting and minimum amounts of disability pension due to injury or illness, and pension in connection with the loss of a breadwinner as a result of the Chornobyl disaster are determined by acts of the Cabinet of Ministers of Ukraine on relevant issues."

The applicants are persons affected by the Chornobyl disaster and receive state disability pensions due to an injury or illness caused by the Chornobyl disaster. The applicants allege that Article 54 of the Law No.796–XII, as amended by the Law No.76–VIII, “contained state guarantees as to the minimum amount of pensions for the disabled of the Chornobyl Nuclear Power Plant."

Provisions of the law, by which the amendments to another law were made, with the entry into force are the norms of the law that has been amended. Thus, the subject matter of constitutional review in this case is Article 54 of the Law No.796–XII as amended by the Law No.76–VIII on the authorisation by the Verkhovna Rada of the Cabinet of Ministers to determine by its acts the minimum amounts of disability pensions caused by injury or illness and pensions in connection with the loss of a breadwinner as a result of the Chornobyl disaster.

In pursuance of the obligation of Article 16 of the Constitution, Ukraine, represented by the legislator, adopted the Law No.796–XII, which established the general procedure for exercising the right of citizens affected by the Chornobyl disaster to protection of life and health and created a single procedure for determining, in particular, social protection of victims.

Article 14 of the Law No.796–XII defines four categories of persons affected by the Chornobyl disaster. Pensions for such persons are established in the form of a state pension and a supplementary pension for damage to health, which is granted after the right to a state pension arises (Article 49.1 of the Law No.796–XII).

It follows from the content of Article 54 of the Law No.796–XII that its provisions regulate the legal relationship regarding the appointment of two types of state pensions, namely:

1) disability pension caused by an injury or illness, the right to which is granted to persons who are classified in category 1;

2) pensions in connection with the loss of a breadwinner as a result of the Chornobyl disaster.

By amending paragraph 4.13 of Section I of the Law No.76–VIII of the Legislative Regulation on Minimum State Pensions, the Verkhovna Rada abolished the social guarantees provided for in Article 54.4 of the Law No.796–XII as amended by the Law No.230/96–VR and allowed the possibility of reducing the guaranteed minimum state pensions.

The Constitution's obligation on the state to protect persons affected by the Chornobyl disaster indicates the special status of such persons in the context of their social protection and health care, and thus determines their enhanced social protection.

Pursuant to Article 54.3 of the Law No.796–XII, as amended by the Law No.76–VIII, which entered into force on January 1, 2015, the conditions, procedure for granting and minimum amounts of disability pension due to injury or illness and pension in connection with the loss of a breadwinner as a result of the Chornobyl disaster are determined by the Cabinet of Ministers in acts on relevant issues.

The minimum amount of disability pension due to injury or illness and pension in connection with the loss of breadwinner due to the Chernobyl disaster is determined in the Procedure for Calculating Pensions for Victims of the Chernobyl Disaster, approved by the Resolution of the Cabinet of Ministers "On Increasing the Level of Social Protection of Citizens Affected by the Chornobyl Disaster” of November 23, 2011 No.1210 as amended (hereinafter - the Procedure).

In Article 54.4 of the Law No.796–XII, as amended by the Law No.230/96–VR, the minimum state pension for persons classified in category 1 was determined in accordance with the amount of the minimum old-age pension.

The Cabinet of Ministers set significantly lower minimum state pensions for persons covered by Article 54 of the Law No.796–XII than were guaranteed at the legislative level by paragraph four of this article of the Law No.796–XII as amended by the Law No.230/96–VR. At the same time, the provisions of Articles 3, 16 and 50 of the Constitution in their interconnection oblige the state under any circumstances to provide persons with disabilities from among the participants in the liquidation of the Chornobyl disaster and Chornobyl victims, for whom a causal link of disability with the Chornobyl disaster has been established, enhanced social protection, the realisation of their right to compensation for damage to health.

 The state may change the legislation in the field of social protection of victims of the Chornobyl disaster, but in case of such regulation it should not resort to restrictions that violate the essence of their individual rights, and the achieved level of social protection be saved.

However, the state, represented by the Cabinet of Ministers of Ukraine, determined in the Procedure the minimum state pension for disability caused by injury or illness, and the pension in connection with the loss of a breadwinner due to the Chornobyl disaster in significantly less amount than guaranteed by the Law No.796–XII as amended by the Law No.230/96–VR, leveling the very essence of the rights and guarantees defined by Articles 3, 16 and 50 of the Constitution of Ukraine, which is in fact a failure of the state to fulfill its positive obligation to provide this category of persons with a guaranteed level of social protection.

In accordance with Articles 3, 16 and 50 of the Constitution of Ukraine in their interconnection, the state has a positive obligation to provide enhanced social protection to persons with disabilities from among those affected by the Chornobyl disaster. The positive duty of the state in this case essentially requires it to take affirmative action measures, given that it is the duty of the state to protect one of the most vulnerable segments of the population that needs it.

Separation by the legislator of persons with disabilities from among the participants in the liquidation of the Chornobyl nuclear power plant, as well as from the victims of the Chornobyl disaster from the category of persons affected by the Chornobyl disaster, persons in need of special treatment by the state, and the introduction of a state pension for this category of persons, as well as the establishment at the level of law of its minimum amounts should be considered as a manifestation of the state's measures of affirmative action for these persons.

Social obligations of the state to citizens who lost their health due to the fact that the state once obliged them to take part in overcoming the consequences of the Chornobyl disaster which is a global catastrophe, and who suffered disabilities as a result of such actions, as well as to persons with disabilities from among the victims of this disaster should not depend on the financial capabilities of the state and its economic situation. Therefore, social guarantees, including the minimum level of social protection for this category of persons, should be established by the legislator. The Cabinet of Ministers of Ukraine, as the state body authorised to develop a draft law on the State Budget of Ukraine and ensure the implementation of the relevant law approved by the legislator, shall determine the conditions and procedure for assigning the statutory minimum state pension for this category of persons.

The state, represented by the Cabinet of Ministers, reduced the guaranteed minimum state pension, which was provided for in Article 54 of the Law No.796–XII, until it was amended by the Law No.76–VIII. As a result of the measures taken by the State, the applicants were deprived of their property as understood by the European Court of Human Rights.

The provisions of Articles 3, 16 and 50 of the Constitution in their interconnection imply not only the obligations of the state to the citizens of Ukraine affected by the Chornobyl disaster, but also guarantees for this category of citizens. The state must compensate the citizens of Ukraine covered by Article 54 of the Law No.796–XII the damage caused to them as a result of validity of Article 54.3 of the Law No.796–XII as amended by the Law No.76–VIII. The state is obliged to develop a procedure (legal mechanism) for compensation for the damage they have suffered as a result of validity of Article 54 of the Law No.796 –XII, as amended by the Law No.76–VIII.

Thus, the Constitutional Court of Ukraine held:

The provisions of Article 54.3 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796-XII as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII on authorisation by the Verkhovna Rada of Ukraine of the Cabinet of Ministers of Ukraine to determine by its acts the minimum amounts of disability pension caused by injury or illness and pension in connection with the loss of a breadwinner as a result of the Chornobyl disaster are declared as such that do not comply with the Constitution of Ukraine (are unconstitutional) and shall cease to be valid three months after the date of the adoption of this Decision by the Constitutional Court.

The Verkhovna Rada within three months from the date of the Constitutional Court's adoption of this Decision is to bring the normative regulation established by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796-XII as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII on authorisation by the Verkhovna Rada of Ukraine of the Cabinet of Ministers of Ukraine to determine by its acts the minimum amounts of disability pension caused by injury or illness and pension in connection with the loss of a breadwinner as a result of the Chornobyl disaster into conformity with the Constitution and this Decision.

In case of non-compliance of the normative regulation established by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796-XII as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII on authorisation by the Verkhovna Rada of Ukraine of the Cabinet of Ministers of Ukraine to determine by its acts the minimum amounts of disability pension caused by injury or illness and pension in connection with the loss of a breadwinner as a result of the Chornobyl disaster with the Constitution and this Decision within three months from the date of the Constitutional Court's adoption of this Decision, Article 54.4 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796-XII as amended by the Law "On Amendments to the Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster" of June 6, 1996 No.230/96-VR will be applied.

Citizens of Ukraine covered by Article 54 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” of February 28, 1991 No.796-XII have the right to compensation for damage they have suffered as a result of Article 54.3 of this law as amended by the Law of Ukraine “On Amendments and Repeal of Certain Legislative Acts of Ukraine” of December 28, 2014 No.76-VIII.

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