**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 1-r(ІІ)/2024 dated February 14, 2024 in the case upon the constitutional complaint of the Private Enterprise “General Construction Management” on the compliance of Articles 321.2.2, 321.3 of the Commercial Procedure Code of Ukraine (on guaranteeing the protection of the rights and freedoms of the person in accordance with the Judgment of the European Court of Human Rights) with the Constitution of Ukraine (constitutionality).**

The Private Enterprise “General Construction Management” (hereinafter, “the Enterprise”) appealed to the Constitutional Court of Ukraine to verify the compliance of Articles 321.2.2, 321.3 of the Commercial Procedure Code of Ukraine (hereinafter, “the Code”) with Articles 3.2, 8, 9.1, 22.3, 55.1, 64.1 of the Constitution of Ukraine (constitutionality).

In accordance with Article 321.2.2 of the Code, an application for review of a court decision based on newly discovered or exceptional circumstances may be submitted “on the grounds specified in Articles 320.2.2, 320.2.3, 320.3 of this Code – not later than ten years from the date such court decision enters into force“.

The subject of constitutional review in this case are Articles 321.2.2, 321.3 of the Code in that they make it impossible to submit, on the basis of a judgment of the European Court of Human Rights, an application for review of a court decision delivered by a national court, after ten years from the date of the latter entrance into force and renewal by the court of the specified ten-year term for submitting an application for review of a court decision delivered by the national court.

The Code’s regulation of relations regarding the review of court decisions in connection with the delivery by the European Court of Human Rights of a judgment establishing a violation of the Convention is one of the legislative mechanisms for ensuring the effectiveness of the principle of the state's responsibility to a person for its activities, and the right of a person to such a review is an integral component of the right to appeal after applying all national legal remedies for the protection of one's rights and freedoms to relevant international judicial institutions or relevant bodies of international organizations of which Ukraine is a member or participant, guaranteed by Article 55.5 of the Constitution.

When submitting an application for review of a court decision in connection with the delivery by the European Court of Human Rights of a judgment in which a violation of the Convention was established, the person in whose favour such a decision was made seeks first of all to eliminate the consequences of the violation of his rights guaranteed by the Convention.

Ukraine, as a state party to the Convention, is obliged to ensure the implementation of the final judgments of the European Court of Human Rights, in which it is established that Ukraine has violated the Convention.

In accordance with the provisions of the Fundamental Law, the legal positions of the Constitutional Court, which are correlated with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms dated 1950, and the case law of the European Court of Human Rights, the realization of the right to judicial protection is possible in compliance with constitutional principles, in particular the principle of finality of court decisions (*res judicata*).

The Constitutional Court considers that the ten-year term specified in the Code for submitting an application for review of court decisions due to the delivery by the European Court of Human Rights of a judgment in which a violation of the Convention was established, and the impossibility of renewing such a term by the court, make the exercise of the right guaranteed by Article 55.5 of the Constitution, dependent on the circumstances beyond the person's control, namely the term of deliberation of his/her application by the European Court of Human Rights.

Thus, the Constitutional Court of Ukraine declared the provisions of Articles 321.2.2, 321.3 of the Commercial Procedure Code of Ukraine as such that do not comply with the Constitution of Ukraine (are unconstitutional) in that they make it impossible to:1) file applications for review of a court decision in connection with the delivery of a judgment by the European Court of Human Rights after ten years from the date of entry into force of the national court decision; 2) renew the deadline for filing an application for review of a national court decision.

Provisions of Articles 321.2.2, 321.3 of the Commercial Procedure Code of Ukraine, that are declared unconstitutional, shall cease to be effective six months after the date of this Decision delivery.

**Cross-References:**

Decisions of the Constitutional Court of Ukraine:

- no. 3-rp/2003, 30.01.2003;

- no. 15-rp/2004, 02.11.2004;

- no. 2-r(ІІ)/2022, 06.04.2022;

- no. 2-r(ІІ)/2023, 01.03.2023;

- no. 10-r(II)/2023, 22.11.2023.

Judgments of the European Court of Human Rights:

- *Ustimenko v. Ukraine*, no. 32053/13, 29.10.2015;

- *Bochan v. Ukraine* (No. 2), no. 22251/08, 05.02.2015.

Report of the European Commission for Democracy through Law (Venice Commission) on the Rule of Law, adopted at its 86th plenary session on 25-26 March 2011 [CDL-AD(2011)003rev].

Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic cases at domestic level following judgments of the European Court of Human Rights of 19 January 2000.