**Summary to the Decision of the Grand Chamber of the Constitutional Court of November 1, 2022 No. 2-r/2022 in the case upon the constitutional petition of 50 People's Deputies regarding the conformity of the Law On Amendments to Article 80 of the Constitution of Ukraine (regarding the Immunity of People's Deputies of Ukraine) with the Constitution (constitutionality) (concerning the constitutional review of amendments to the Constitution after their taking effect)**

The subject of the right to constitutional petition - 50 People's Deputies - appealed to the Constitutional Court with a request to declare that the Law On Amendments to Article 80 of the Constitution of Ukraine (Regarding Immunity of People's Deputies of Ukraine) of September 3, 2019 No. 27-IX (hereinafter referred to as “the Law”), whereby the provisions that guaranteed People's Deputies parliamentary immunity and according to which People's Deputies could not be without the consent of the Verkhovna Rada prosecuted, detained or arrested were excluded from Article 80 of the Basic Law, does not correspond to Articles 6, 8, 19, 155 of the Constitution (is unconstitutional).

It follows from Article 159 of the Constitution that it clearly defines the obligation of preliminary (*a priori*) constitutional review. However, the Constitution does not provide a clear indication that the Constitutional Court may exercise subsequent (*a posteriori)* constitutional review over constitutional amendments after their taking effect.

The Constitution of Ukraine does not provide for reservations on the possibility of the Constitutional Court of Ukraine to exercise the subsequent *(a posteriori)* constitutional review over the law concerning the amendments to the Constitution of Ukraine as a constitutional amendment after its adoption by the Verkhovna Rada of Ukraine.

The Constitutional Court of Ukraine shall exercise the subsequent *(a posteriori)* constitutional review over constitutional amendments after they had entered into force, since the lack of judicial review over the procedure for consideration and adoption of relevant laws, defined by the provisions of Chapter XIII of the Constitution of Ukraine, may result in restricting or abolishing human and citizen’s rights and freedoms, eliminating independence or violating territorial integrity, or changing the constitutional order in a manner that is not allowed by the Constitution of Ukraine.

Not only compliance with the procedure established by the Constitution of Ukraine for consideration, adoption and entry into force of the laws, which as constitutional amendments are acts of the constitution-maker acting through the Verkhovna Rada of Ukraine, is an indispensable condition for the legitimacy of the constituent power of the people. As follows from Article 157 of the Constitution of Ukraine, the constituent power explicitly limited itself by not allowing amending those provisions of the Constitution of Ukraine that protect “human and citizen’s rights and freedoms”, “independence” and “territorial integrity”.

The subject of the right to constitutional petition notes that on October 17, 2017, the President submitted to the Verkhovna Rada a draft Law of Ukraine on Amendments to Article 80 of the Constitution of Ukraine (Regarding the Immunity of People's Deputies of Ukraine) (Reg. No. 7203) (hereinafter referred to as “the Draft Law”) and defined it as urgent.

The Verkhovna Rada by its Resolution “On inclusion into the agenda of the seventh session of the Verkhovna Rada of Ukraine of the eighth convocation of the draft law on amendments to Article 80 of the Constitution of Ukraine (Regarding the Immunity of People's Deputies of Ukraine) and on its submission to the Constitutional Court of Ukraine” dated October 19, 2017 No. 2171-VIII included the Draft Law into the agenda of the seventh session of the Verkhovna Rada of the eighth convocation and submitted it to the Constitutional Court.

The Constitutional Court provided an Opinion in the case upon the constitutional petition of the Verkhovna Rada to provide an opinion on the compliance of the Draft Law with the requirements of Articles 157 and 158 of the Constitution dated June 19, 2018 No. 2-v/2018 (hereinafter referred to as “the Opinion”), in which the Draft Law was declared as complying with the requirements of Articles 157 and 158 of the Constitution, however the Court made a number of reservations.

The Opinion was presented to the People's Deputies on July 3, 2018, and on September 20, 2018, the Verkhovna Rada adopted the Resolution “On further work on the draft law on amendments to the Constitution of Ukraine (Regarding the Immunity of the People's Deputies of Ukraine)” under No. 2557-VIII, which set the deadline: submission of proposals and amendments to the Draft Law - until October 19, 2018 (inclusive); processing by the committees of the Verkhovna Rada - until November 7, 2018 (inclusive). According to the mentioned resolution, the Committee of the Verkhovna Rada on Legal Policy and Justice had to process proposals and amendments to the Draft Law and organise the provision of the documents specified in Article 150.3 of the Rules of Procedure of the Verkhovna Rada to the People's Deputies within the period until November 21, 2018 (inclusive).

After receiving the Opinion, the Verkhovna Rada of the eighth convocation did not pre-approve the Draft Law.

The first plenary meeting of the first session of the Verkhovna Rada of the ninth convocation was held on August 29, 2019. The Draft Law No. 7203 was included into the agenda of this meeting. On the same day, during a break in the plenary session of the Verkhovna Rada of the ninth convocation, the Committee of the Verkhovna Rada on Legal Policy and Justice held a meeting at which it considered Draft Law No. 7203 and recommended that the Verkhovna Rada declare that the Resolution of the Verkhovna Rada has in fact lost its validity “On further work on the draft law on amendments to the Constitution of Ukraine (Regarding the Immunity of the People's Deputies of Ukraine)” of September 20, 2018 No. 2557-VIII in view of the expiration of the terms established by it and to pre-approve the Draft Law.

The Rules of Procedure of the Verkhovna Rada do not provide for the possibility of withdrawing the draft law on amendments to the Constitution after receiving the Opinion of the Constitutional Court regarding the compliance of this draft law with the requirements of Articles 157 and 158 of the Constitution in view of the expiration of the powers of the Verkhovna Rada of the corresponding convocation.

If the powers of the Verkhovna Rada have been suspended, however it has not considered the issue of adopting, in accordance with Article 156.1 of the Constitution, a draft law on amendments to the Constitution regarding which there is an opinion of the Constitutional Court that has not been considered by the Verkhovna Rada, the issue of consideration of such a draft law shall be included in the agenda of the first session of the newly elected Verkhovna Rada without voting (Article 149.4 of the Rules of Procedure).

The Constitutional Court considers that the Draft Law was reasonably included in the agenda of the first session of the Verkhovna Rada of the ninth convocation, as it was not withdrawn or considered by the Verkhovna Rada of the previous convocation in the prescribed manner.

The first session of the Verkhovna Rada of a new convocation is a regular session, and it begins at a different time than that specified for the rest of the regular sessions of the Verkhovna Rada.

The days of the second regular session of the Verkhovna Rada and subsequent sessions are directly determined by the Constitution, however, such sessions may not be started on the first Tuesday of February or the first Tuesday of September for reasons established in the Constitution (for example, early termination of the powers of the Parliament).

Instead, the first session of the newly elected Verkhovna Rada must begin within the time limit established by the Constitution.

Regular sessions of the Verkhovna Rada shall begin within the time limit specified by the Constitution:

- regular sessions of the Verkhovna Rada - the first Tuesday of February, the first Tuesday of September every year;

- in another period, when it is impossible to determine in advance the day of the regular session, since it is affected by: the date of the announcement of the election results (which is not known in advance) and the will of the newly elected People's Deputies to gather for the first session, which they shall demonstrate on any day during thirty days after the official announcement of the election results.

The Constitution does not determine the date of the first session of the Verkhovna Rada of the new convocation, however, such a session is mandatory and the terms of its holding are established.

The first session of the Verkhovna Rada of the new convocation is held within the constitutionally determined terms, the work of the newly elected Verkhovna Rada starts counting from this session, it is the first regular session of the Verkhovna Rada of the new convocation.

Preliminary approval of the draft law on amendments to the Constitution may take place at the first session of the newly elected Verkhovna Rada. Adoption of the draft law on amendments to the Constitution as a law shall take place at the next regular session of the Verkhovna Rada, which should be understood only as the regular session of the Verkhovna Rada, which begins on the first Tuesday of February and the first Tuesday of September each year. At the first session of the Verkhovna Rada of the ninth convocation for the Resolution of the Verkhovna Rada “On Preliminary Approval of the Draft Law on Amendments to Article 80 of the Constitution of Ukraine (Regarding the Immunity of People's Deputies of Ukraine)” dated August 30, 2019 No. 24-IX, which entered into force on the day of its adoption, 363 People's Deputies voted.

The Verkhovna Rada considered the Draft Law No. 7203 and adopted it as a Law at the first meeting of the second session of the Verkhovna Rada of the ninth convocation on September 3, 2019, which is the next regular session of the Verkhovna Rada within the meaning of Article 83.1 of the Constitution. 373 People's Deputies, that is, more than two-thirds of the constitutional composition of the Verkhovna Rada, voted for Draft Law No. 7203, in compliance with the requirements of Article 155 of the Constitution.

When carrying out constitutional review over compliance with the constitutional procedure of consideration, adoption or entry into force of the laws of Ukraine in accordance with Article 152.1 of the Basic Law of Ukraine, the Constitutional Court of Ukraine reviews not only compliance with the formal procedures provided for in the Constitution of Ukraine. Observance of the democratic essence by the parliament as a representative body of the people is also subject to verification, in particular, the consideration, consistency and reasonableness of the process of consideration of the decisions it adopts, the true possibility of People's Deputies of Ukraine to exercise their rights in this process.

The Constitutional Court of Ukraine makes a constitutional reservation regarding the practice of development and adoption of laws on amendments to the Constitution of Ukraine, which do not have the proper signs of consideration and consistency, which should be intrinsic to the adoption of constitutional amendments, in particular, regarding the actual separation over time of the two Verkhovna Rada votes for the Draft Law.

Therefore, the provisions of Articles 8.1 and 19 of the Constitution of Ukraine which do not regulate issues of the constitutional review procedure, the adoption of laws of Ukraine by the Verkhovna Rada or their entry into force cannot be applied in this case.

Thus, the Constitutional Court of Ukraine declared that the Law On Amendments to Article 80 of the Constitution of Ukraine (Regarding the Immunity of People's Deputies of Ukraine) of September 3, 2019 No. 27-ХХ conforms to the Constitution (is constitutional), since the constitutional procedure for consideration, adoption and entry into force by this law was not violated.

*References:*

Decisions of the Constitutional Court of Ukraine:

 - No. 8-rp/98 dated June 9, 1998,

 - No. 9-rp/2000 dated July 12, 2000,

 - No. 1-rp/2016 dated March 15, 2016,

 - No. 4-r/2018 dated April 26, 2018.