**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 2-r(II)/2025 dated January 20, 2025 in the case upon the constitutional complaint of Petro Kontorskyi regarding the compliance of Articles 4.2.1.7, 8.1 of the Law of Ukraine “On Court Fee” (on access to the court of cassation in civil proceedings) with the Constitution of Ukraine (constitutionality)**

Petro Kontorskyi appealed to the Constitutional Court to verify the compliance of Articles 4.2.1.7, 8.1 of the Law “On Court Fee” No. 3674–VI dated July 8, 2011 as amended (hereinafter, the “Law”) with Articles 8.2, 24.1, 24.2 in interaction with Articles 22.3, 48, 55.1, 55.2, 129.2.2 of the Constitution (constitutionality).

Pursuant to Article 4.2.1.7 of the Law, a court fee rate for filing a cassation appeal against a court decision, an application for joining a cassation appeal against a court decision is set at 200 percent of the rate payable when filing a claim, other application and complaint in the amount of the disputed sum.

Article 8.1 of the Law provides for the following: “Taking into account the financial status of a party, the court may, by its ruling upon its application, defer or installment payment of the court fee for a certain period of time, but not longer than until the court decision in the case is delivered under the following conditions:

1) the amount of the court fee exceeds 5 percent of the annual income of the applicant – an individual for the preceding calendar year; or

2) the applicants are:

a) military personnel;

b) parents who have a child under the age of fourteen or a child with a disability, if the other parent evades paying alimony;

c) single mothers (fathers) with a child under the age of fourteen or a child with a disability;

d) members of a low-income or large family;

e) a person acting in the interests of juveniles or underage persons and persons who have been recognised by a court as incapacitated or whose capacity is limited; or

3) the subject matter of the claim is the protection of social, labour, family, housing rights, compensation for damage to health.”

The payment of court fee as one of the conditions for access to court does not contradict the essence of the right to judicial protection guaranteed by Article 55.1 of the Fundamental Law. Provisions of law may establish an obligation to pay court fee. At the same time, these provisions of law must be clear and understandable in content, have a legitimate purpose and meet the requirement of proportionality.

The individual provision of Article 4.2.1.7 of the Law is clear and understandable and meets the requirement of legal certainty.

A number of laws introduced the requirement to pay court fee as one of the conditions for access to court. The main purpose of establishing the court fee was to ensure the administration of justice and the functioning of the judiciary.

The Constitutional Court notes that the constitutional provisions do not prohibit the establishment of a court fee by law as a condition for access to court.

By adopting the Law and amendments to it, the Verkhovna Rada identified a court fee in particular as a source of funding necessary for the appropriate performance of courts and judges.

The content of the public interest, which the institution of court fee is aimed at satisfying, is quite clear – determining an additional source of funding for the administration of justice.

Given that the state has a wide margin of discretion in determining the grounds and cases for collecting court fees in the course of exercising the right of a person guaranteed by Articles 55.1 and 129.2.8 of the Constitution, the Verkhovna Rada was authorised to establish a court fee for filing a cassation appeal.

Taking into account the above, the Constitutional Court holds that the purpose of regulating the rate of the court fee for filing a cassation appeal by an individual provision of Article 4.2.1.7 of the Law is legitimate.

In a state governed by the rule of law, the exercise of the right of access to court should depend primarily on the nature of the dispute and other significant circumstances related to the issues of law in the case, and should not depend primarily or exclusively on the financial capacity of the party to the legal dispute.

According to Article 92.1.14 of the Constitution, the Verkhovna Rada has the authority to regulate the judicial process, so the law should establish the procedure for determining the court fee rate, the amount of which will ensure that a fair balance is achieved in a particular civil case between the public interest in receiving court fees to finance the administration of justice and the private interest in paying a proportionate amount of court fee.

The grounds and procedure for applying to the Supreme Court as a court of cassation in civil cases to exercise the right to cassation appeal against court decisions delivered by the courts of first instance and appellate courts should be determined by law.

At the same time, in order to develop, specify and elaborate on the provisions of Article 129.2.8 of the Constitution, the right of access to the court of cassation as defined by law must be real and effective.

If the law establishes an unreasonably high court fee for filing a cassation appeal by a party to a civil case, the possibility of exercising the right to cassation appeal against a court decision guaranteed by the provisions of Articles 55.1, 129.2.8 of the Constitution will be theoretical and illusory.

The Constitutional Court concludes that the determination of the court fee rate for filing a cassation appeal by an individual provision of Article 4.2.1.7 of the Law is not flexible and links the possibility of access to the Supreme Court as a court of cassation not to the merits of the civil dispute, other issues of law, in particular the need to eliminate violations of the norms of substantive and (or) procedural law, to correct judicial errors and shortcomings in the decisions of the first and (or) second instance courts, but only to the financial issue; the individual provision of Article 4.2.1.7 of the Law does not comply with the principle of proportionality, since it restricts access of a person to the Supreme Court as a court of cassation only because of the financial issue.

On the basis of a number of provisions of the Law, the Civil Procedure Code and subject to the conditions specified by the Law, the court may deliver a procedural decision to defer, installment, reduce or exempt the court fee.

Granting the court discretionary authority under Article 8.1 of the Law to defer or installment the payment of court fees for a certain period of time based on the party’s financial status has a legitimate purpose – to ensure access to court – and is an additional means of *affirmative action* by the state in the area of realisation of the right to judicial protection for persons in difficult financial circumstances. This power can only be exercised taking into account the specific circumstances of the civil case, primarily the property status of the party.

The use by a court of the power under Article 8.1 of the Law to defer or installment payment of the court fee for filing a cassation appeal by a party to a legal dispute ensures the realisation of the norms and principles set forth in Articles 3 and 8.1 of the Constitution.

Article 8.1 of Law “On Court Fee” No. 3674–VI dated July 8, 2011, as amended, was declared to be consistent with the Constitution (constitutional).

The individual provision of Article 4.2.1.7 of Law “On Court Fee” No. 3674–VI dated July 8, 2011, as amended, was declared unconstitutional, namely: “cassation appeal against a court decision”.

The individual provision of Article 4.2.1.7 of Law “On Court Fee” No. 3674–VI dated July 8, 2011, as amended, declared unconstitutional, shall cease to be effective six months after the date of delivery of this Decision by the Constitutional Court.

**Supplementary information:**

* Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe to Member States on Measures Facilitating Access to Justice, adopted by the Committee of Ministers on 14 May 1981 at its 68th Session.

**Cross-References:**

Constitutional Court of Ukraine:

* no. 12-rp/2013, 28.11.2013;
* no. 5-rp/2016, 08.07.2016;
* no. 4-r(II)/2020, 17.06.2020;
* no. 5-r(II)/2021, 21.07.2021;
* no. 2-r(II)/2022, 06.04.2022;
* no. 2-r(II)/2023, 01.03.2023;
* no. 10-r(II)/2023, 22.11.2023;
* no. 6-r(II)/2024, 13.05.2024.

European Court of Human Rights:

* *Bellet v. France*, no. 23805/94, 04.12.1995;
* *Kreuz v. Poland*, no. 28249/95, 19.06.2001;
* *Ashingdane v. the United Kingdom*, no. 8225/78, 28.05.1985;
* *Melnуk v. Ukraine*, no. 23436/03, 28.03.2006;
* *Zubac v. Croatia*, no. 40160/12, 05.04.2018;
* *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, 02.10.2018;
* *Balkūnas v. Lithuania*, no. 75435/17, 07.07.2020;
* *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, 26.07.2011;
* *Laçi v. Albania*, no. 28142/17, 19.10.2021.

Other Courts:

* Federal Constitutional Court of Germany, no. 1 BvL, 11, 27.08.1999;
* Constitutional Court of the Republic of Latvia, no. 2004-16-01, 04.01.2005;
* Constitutional Court of the Republic of Latvia, no. 2021-22-01, 23.02.2022.