**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 3-r(ІІ)/ 2024 dated March 26, 2024 in the case upon the constitutional complaint of Yelyzaveta Yevhrafova regarding the compliance of the specific provision of paragraph 7 of Section XII “Final and Transitional Provisions” of the Law of Ukraine “On the Judiciary and the Status of Judges” No. 1402-VIII dated June 2, 2016 (on the uniform status of judges in Ukraine) with the Constitution of Ukraine (constitutionality)**

Yelyzaveta Yevhrafova appealed to the Constitutional Court of Ukraine to verify the compliance of the specific provision of paragraph 7 of Section XII “Final and Transitional Provisions” of the Law of Ukraine “On the Judiciary and the Status of Judges” No. 1402– VIII dated June 2, 2016, as amended, (hereinafter, “Law  No. 1402”) «in terms of determining the guarantees of judges of the Supreme Court of Ukraine, of the High Specialised Court of Ukraine for Civil and Criminal Cases, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine until the termination of these courts’ activities by the Law of Ukraine “On the Judiciary and Status of Judges” No. 2453– VI dated July 7, 2010, (hereinafter, “Law No. 2453”)» with Articles 8.1, 8.2, 19.2, 24.1, 24.2, 41.1, 41.4, 126.1 of the Constitution of Ukraine (constitutionality).

The Constitutional Court of Ukraine believes that the legislator should regulate the status, organisation, functioning and activities of courts and judges in accordance with the Constitution of Ukraine and the principles, guarantees of independence and inviolability of judges, defined by it, preventing, first of all, any influence on the judiciary and each individual judge, both on its part and on the part of other bodies of state power, their officials and other persons.

All judges of the Ukrainian judicial system courts have a uniform status, which is inherent in them as persons performing an exclusive constitutional function – the administration of justice. The uniform status of judges means the equality of the legal status of judges in all aspects, primarily, the uniformity of their guarantees of independence and inviolability, rights and obligations, requirements, restrictions, prohibitions and liability. At the same time, ensuring guarantees of independence and inviolability of judges should be based on the principle of a uniform status of judges, which does not permit, in particular, selectivity in ensuring these guarantees and lowering their level for a certain category of judges, that does not contribute to the administration of justice by unbiased, objective, impartial and independent courts, the exercise of the constitutional right to judicial protection.

Adequate material and social security of judges, including the right to judicial remuneration, and other constitutional guarantees of judge’s independence and inviolability are extended to all judges and must be ensured by the state on the basis of the principle of a uniform status of judges without any reduction in the level of such guarantees.

The constitutional guarantee of judicial independence – judicial remuneration– is an integral part of the uniform status of judges.

Regulation of the right to judicial remuneration should meet the purpose of establishing a constitutional guarantee of material security for judges as an element of their independence and the principle of a uniform status of judges, and therefore judges of the same system and level of courts of Ukraine are equal in terms of guarantees of material security, in particular, in terms of the amount of judicial remuneration. In other words, the right to judicial remuneration may not be different for a certain category of judges for reasons not related to the uniform status of judges, in particular, it may not be different for judges due to the systems introduced in a court, according to which the judicial remuneration depends on the accounting of working hours or other circumstances indicating the results of their work, or be less for a judge who does not actually administer justice due to circumstances beyond his/her control or not caused by his/her behaviour.

Article 125.2 of the Constitution provides that reorganisation, liquidation or other actual termination of court’s activities does not deprive each of its judges of the status of a judge.

Establishment of the amount of judicial remuneration by Law No. 2453 means not only guaranteeing its amount at the level of a special law, but also the existence of one such law that clearly, systematically and consistently regulates the issue of the amount of judicial remuneration in accordance with the uniform status of judges and guarantees of independence and inviolability of judges.

The regulation by the impugned provision of Law No. 1402 of the establishment of remuneration of a judge of the High Specialised Court of Ukraine for Civil and Criminal Cases, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine, as defined by Law No. 2453, until the termination of the activities of these courts, is not based on clear and known in advance conditions for differentiating the amount of judicial remuneration, is not caused by the status of the judge or his/her professional activity, since the lower amount of remuneration of a judge of these higher specialised courts can only be explained by the fact that they have been members of courts that have ceased to be effective and are in the process of liquidation for a long time, not by their own will. The judges of these high specialised courts, who were not dismissed from office or whose powers were not terminated on the grounds specified by the Constitution of Ukraine, are judges of the judicial system of Ukraine, administer justice, and therefore do not differ in their legal status from other judges whose remuneration is calculated in accordance with Law No. 1402.

The Constitutional Court of Ukraine notes that by the impugned provision of Law No. 1402 the legislator has actually defined a certain category of judges, namely, judges of the High Specialised Court of Ukraine for Civil and Criminal Cases, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine, for whom, until the termination of the activity of these courts, contrary to the constitutional guarantee of material security of judges as an element of their independence and the principle of the uniform status of judges, selectively established a different (lower) amount of the judicial remuneration under Law No. 2453, compared to judges to whom such remuneration is determined by Law No. 1402. Therefore, the disputed provision of Law No. 1402 narrows the guarantees of independence of this category of judges, which is an influence on these judges, and consequently poses a threat to both their independence and the judicial power as a whole and contradicts the provisions of Articles 8.1, 8.2, 19.2, 126.1, 126.2 of the Constitution.

The Constitutional Court of Ukraine has declared unconstitutional the specific provision of paragraph 7 of Section XII “Final and Transitional Provisions” of the Law of Ukraine “On the Judiciary and the Status of Judges” No. 1402–VIII dated June 2, 2016, as amended, in that it establishes for judges of the High Specialised Court of Ukraine for Civil and Criminal Cases, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine until the termination of these courts’ activities, the guarantees set forth in the Law “On the Judiciary and Status of Judges” No. 2453– VI dated July 7, 2010, as amended, including judicial remuneration, it shall cease to be effective from the date of this Decision.

**Cross-references:**

Constitutional Court of Ukraine:

 - no. 6-rp/99, 24.06.1999,

 - no. 5-rp/2002, 20.03.2002,

 - no. 19-rp/2004, 01.12.2004,

 - no. 8-rp/2005, 11.10.2005,

 - no. 3-rp/2013, 03.06.2013,

 - no. 4-rp/2016, 08.06.2016,

 - no. 11-r/2018, 04.12.2018,

 - no. 3-r(I)/2019, 05.06.2019,

 - no. 1-r/2020, 23.01.2020,

 - no. 2-r/2020, 18.02.2020,

 - no. 4-r/2020, 11.03.2020,

 - no. 10-r/2020, 28.08.2020,

 - no. 8-r(ІІ)/2023, 13.09.2023.

Basic Principles on the Independence of the Judiciary, endorsed by United Nations General Assembly resolutions 40/32 of 29.11.1985 and 40/146 of 13.12.1985,

Annex to Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities adopted by the Committee of Ministers on 17.11.2010,

European Charter on the Statute for Judges, 10.07.1998,

Opinion No. 969/2019 of European Commission for Democracy through Law (Venice Commission) on Amendments to the legal framework governing the supreme court and judicial governance bodies, CDL-AD(2019)027,

Opinion no. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Standards concerning the Independence of the Judiciary and the Irremovability of Judges, 01.01.2001,

Conclusions “Economics, Jurisdiction and Independence” (First Expert Panel of the International Judges Association, Montevideo, 21-24.11.2005),

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Constitutional Court of Latvia, no. 2009‑111‑01, 18.01.2010,

**Supreme Court** of Estonia, no. 3-3-1-59-07, 14.04.2009,

Constitutional Court of Lithuania, no. 27/2009-30/2009-31/2010-53/2010-55/2010, 14.02.2011.