**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 5-r(II)/2022 of June 22, 2022 in the case upon the constitutional complaint of Oleksiy Abramovych on conformity of Article 40.2.2 of the Housing Code of Ukraine with the Constitution of Ukraine (the case on the discrimination in the implementation of the right to housing)**

Abramovych O.V. appealed to the Constitutional Court with a request to consider the issue of compliance of Article 40.2.2 of the Housing Code of the Ukrainian SSR, according to which citizens who need to improve their living conditions are deregistered in case they “are leaving for permanent residence to another locality” with Articles 24.2 and 47.2 of the Constitution.

During the consideration of this case by the Constitutional Court, the Housing Code of Ukrainian SSR was amended by the Law of Ukraine “On the De-Sovietisation of the Legislation of Ukraine” of April 21, 2022, No. 2215-IX, which entered into force on May 7, 2022. In particular, the name of the Housing Code of Ukrainian SSR is set out in a new edition, the Housing Code (hereinafter referred to as the Code). The Constitutional Court considers that the introduction of this change does not affect the essence of the impugned provision of the Code, and, therefore, there is no any effect on the subject of constitutional control in this case.

The Constitutional Court assumes that the principle of the welfare state (Article 1), the principle of protection of human rights (Article 3.2), the principle of equality (Articles 21, 24.1, 24.2) that are established by the Constitution, are relevant in this case.

The Constitutional Court notes that the human rights and freedoms guaranteed by the Constitution are not limited to those contained in the text of the Basic Law.

The Constitutional Court came to the conclusion that the freedom (liberty) of a person is *a priori* determining and of key priority for respect by the state as a whole, state authorities, local governments, and other subjects. The Constitutional Court is guided by the fact that the constitutional presumption of human freedom necessitates the justification of any significant restriction from the state.

The right to housing, guaranteed by Article 47 of the Constitution, is linked to the right to an adequate standard of living (Article 48 of the Constitution), which, in addition to adequate food and clothing, also includes adequate housing for everyone.

The right to housing, guaranteed by Article 47 of the Constitution, is the corollary of the right of everyone to an adequate standard of living (Article 48 of the Basic Law), since housing can only be recognised as such living conditions for an individual that provide him/her with the opportunity to be in safety, peace and dignity.

The Constitutional Court emphasises on the particularly strong links between the constitutionally guaranteed right to housing, on the one hand, and the freedom of movement and free choice of residence (Article 33.1), on the other.

An individual, exercising his/her constitutional rights and freedoms, may have several places of residence, including in several localities, and this cannot lead to an obstacle to the effective implementation of other constitutional rights.

The Constitutional Court draws attention to the constitutional significance, content and the scope of the principles of equality, prohibition of discrimination, observance of human rights and freedoms, particularly, the protection of the right to housing, freedom of movement, in the light of common European values. In addition to the Code, the legislator regulated the issue of the exercise of the constitutional right to housing by citizens, that are in need of social protection, by the Law “On Social Housing”, which is a special legislative act in this matter in the context of lex *specialis derogat generali*.

The impugned provision of Article 40 of the Code regarding the deregistration of citizens, that are in need of better housing conditions, on the basis of “leaving for permanent residence to another locality” is separate from the content of the special legislative regulation on the exercise of the right to housing by citizens that are in need of social protection, on the argumentation, specified in the constitutional complaint, cannot be declared as contrary to the provision enshrined in Article 47.2 of the Constitution.

The Constitutional Court concluded that the legislator, in Article 40.2.2 of the Code, had violated the constitutional prohibition on privileges or restrictions established in Article 24.2 of the Basic Law.

The Constitutional Court notes that the restriction of the constitutional freedom of movement, free choice of place of residence, which is stipulated in Article 40.2.2 of the Code, is deprived of a legitimate aim and is not justified. Consequently, the Constitutional Court found Article 40.2.2 of the Code inconsistent with Article 33.1 of the Basic Law.

Thus, the Constitutional Court of Ukraine held to declare Article 40.2.2 of the Housing Code inconsistent with the Constitution (unconstitutional). It shall become invalid from the date of the adoption of this Decision by the Constitutional Court.

***References:***

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