**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 5-r(ІI)/2024 dated April 10, 2024 in the case upon the constitutional complaint of Hanna Pleskach regarding the compliance of the individual provision of Article 459.1 of the Criminal Procedure Code of Ukraine with the Constitution of Ukraine (constitutionality)**

The subject of the right to constitutional complaint – H. Pleskach – appealed to the Constitutional Court of Ukraine to verify the compliance of the individual provision of Article 459.1 of the Criminal Procedure Code of Ukraine(hereinafter, the “Code”).

The subject of constitutional review in this case is not Article 459.1 of the Code as a whole, but only its individual provision regulating the review of court decisions due to newly discovered circumstances, namely: “court decisions that have entered into force may be reviewed due to newly discovered circumstances” (hereinafter, the “impugned provision of Article 459 of the Code”).

Newly discovered circumstances are evidence and other circumstances that were unknown at the time of the court decision delivery, and their consideration during the review of the court decision may lead to its alteration.

Given the fundamental principles of judicial proceedings and the need to observe the principle of the finality of a court decision (*res judicata*), the Constitutional Court of Ukraine considers that, in contrast to an appellate review of a case and a cassation appeal of a court decision, the review of court decisions due to newly discovered circumstances is an extraordinary type of review of court decisions.

The legitimate purpose of defining in the Code the institute of review due to newly discovered circumstances of court decisions that have entered into force is to ensure a fair balance in the field of criminal law between the finality of a court decision (*res judicata*) as an element of the principle of legal certainty and the justice that should be achieved as a consequence the administration of justice.

The Constitutional Court of Ukraine considers that the observance of the principle of finality of a court decision (res judicata) does not entail a categorical prohibition on the review due to newly discovered circumstances of court decisions delivered as a result of the court's failure to take into account evidence of significant importance, since the task of criminal proceedings is not only to ensure that everyone who has committed a criminal offence is brought to justice, but also that no innocent person is subjected to unreasonable procedural coercion, accused or convicted.

The institute of review due to newly discovered circumstances of court decisions that have entered into force as an extraordinary type of review of court decisions does not contradict the provisions of the Constitution.

Given the role of the investigating judge in exercising judicial review over the implementation of the tasks of criminal proceedings by the pre-trial investigation authorities and the importance of the investigating judge's ruling for the observance of constitutional human rights and freedoms, the Constitutional Court of Ukraine points out that reviewing the investigating judge's ruling due to newly discovered circumstances does not contradict the principle of finality of a court decision (*res judicata*).

The observance of the principle of the finality of a court decision (*res judicata)* regarding rulings of investigating judges in the case of granting the right to their review due to newly discovered circumstances is possible only if there are substantial and convincing prerequisites for such a review and taking into account the need to comply with the requirements for reasonable periods of pre-trial investigation.

If a person tries to exercise the right to review the ruling of the investigating judge due to newly discovered circumstances in order to prevent the timely completion of the pre-trial investigation or for another purpose that is not consistent with the essence of reviewing court decisions due to newly discovered circumstances as an extraordinary type of review of court decisions, there are grounds for the conclusion that the right to such review should not be ensured by constitutional guarantees.

The Court holds that the impugned provision of Article 459 of the Code does not contradict Articles 8.1, 55.1, 55.2, 129.2 of the Constitution.

The impugned provision of Article 459 of the Code does not contain a prohibition on the review due to newly discovered circumstances of any type of court decisions that has entered into force.

As a result, the impugned provision of Article 459 of the Code does not contain signs of discrimination against participants in criminal proceedings, since it does not directly establish different regulation of procedural relations for reviewing due to newly discovered circumstances of court decisions that have entered into force, in particular, rulings of the investigating judge. Therefore, according to the impugned provision of Article 459 of the Code, participants in criminal proceedings have the same procedural rights to review due to newly discovered circumstances of court decisions that have entered into force, in particular, the decision of the investigating judge at the pre-trial investigation stage and the court ruling during judicial proceedings or other stages of criminal proceedings.

The Constitutional Court of Ukraine held the individual provision of Article 459.1 of the Criminal Procedure Code of Ukraine in accordance with which “court decisions that have entered into force may be reviewed due to newly discovered circumstances” as conforming with the Constitution of Ukraine (is constitutional).

**Supplementary information:**

Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations, 10.12.1948,

The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950,

Study no. 711/2013, CDL-AD(2016)007, Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12.03.2016),

Study no. 512/2009, CDL-AD(2011)003rev, Report on the Rule of Law, adopted by the Venice Commission at its 86th Plenary Session (Venice, March  25- 26, 2011).

**Cross-references:**

Constitutional Court of Ukraine:

* no. 3-rp/2003, 30.01.2003;
* no. 9-rp/2012, 12.04.2012;
* no. 2-r/2019, 04.06.2019;
* no. 5-r/2020, 17.03.2020;
* no. 4-r(II)/2020, 17.06.2020;
* 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. 1-r(II)/2024, 14.02.2024.

European Court of Human Rights:

* *Ashingdane v. the United Kingdom*, no. 8225/78, 28.05.1985;
* *Brumarescu v. Romania* [GC], no. 28342/95, 28.10.1999;
* *Khristov v. Ukraine*, no. 24465/04, 19.02.2009;
* *Ponomaryov v. Ukraine*, no. 3236/03, 03.04.2008;
* *Mitsopoulos v. Ukraine*, no. 62006/09, 09.12.2021;
* *Guincho v. Portugal* no. 8990/80, 10.07.1984;
* *Popov v. Moldova* (No. 2), no. 19960/04, 06.12.2005;
* *Sejdić and Finci v. Bosnia and Herzegovina* nos. 27996/06 and 34836/06, 22.12.2009;

Federal Constitutional Court of Federal Republic of Germany, no. BVerfG 2 BvR 2136/17, 13.02.2019.

Constitutional Court of the Republic of Latvia, no. 2015-19-01, 29.04.2016.

Constitutional Court of the Republic of Latvia, no. 2001-10-01, 05.03.2002.