**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 6-r(II)/2024 dated May 13, 2024, in the case upon the constitutional complaint of Volodymyr Lopushanskyi regarding the compliance of Articles 3.2, 4.2.1.9 of the Law “On Court Fee” with the Constitution of Ukraine (constitutionality) (case on binding nature of a court decision)**

V. Lopushanskyi appealed to the Constitutional Court of Ukraine with a petition to declare Articles 3.2, 4.2.1.9 of the Law “On Court Fee” No. 3674-VI dated July 8, 2011, as amended, (hereinafter, the “Law”) as such that do not comply with Constitution (are unconstitutional).

Article 3.2 of the Law defines the list of applications for submission of which the court fee is waived.

Article 4.2.1.9 of the Law sets out the court fee rates for filing appellate and cassation complaints against a court ruling, as well as an application for joining an appellate or cassation complaint against a court ruling.

The author of the petition stresses that the application of the disputed provisions of the Law in the final court decision in his case violates his right to judicial protection and to appeal in court against decisions, actions or inactions of the bodies of state power, local self-government bodies, officials and employees (Articles 55.1, 55.2 of the Constitution) and do not ensure the state’s execution of the court decision and control over its execution (Article 1291 of the Fundamental Law).

The subject of constitutional review in this case are Articles 3.2, 4.2.1.9 of the Law in terms of the obligation of the plaintiff (recoverer in enforcement proceedings) to pay a court fee for filing an appellate or cassation complaint against a court ruling issued upon deliberation of a complaint against a decision, actions or inactions of a state enforcement officer or other official of the state enforcement service in the course of execution of a court decision.

The Constitutional Court of Ukraine holds that the right to judicial protection established by Article 55.1 of the Constitution should be considered with regard to the fundamental principles of judicial proceedings, as defined by Article 129.2 of the Constitution and taking into account the right to a fair trial (which includes the obligation of the state to execute a court judgment) guaranteed by Article 6 of the Convention.

Failure of the state to fulfil this obligation contradicts the provisions of Articles 129.2.9, 1291.1 and 1291.2 of the Constitution and leads to a violation of the right of person to judicial protection, and reduces the effectiveness of the judicial process, which is incompatible with the rule of law principle set forth in Article 8.1 of the Constitution.

It follows from the provisions of the Law impugned by the subject of the right to a constitutional complaint that a court fee is payable for filing an appellate or cassation complaint against a court ruling upon the deliberation of a complaint filed in accordance with Article 447 of the Civil Procedure Code, while no court fee is payable for filing a complaint against a decision, action or inaction of a state enforcement officer or other official of the state enforcement service or a private enforcement officer.

The obligation to pay a court fee for filing an appellate or cassation complaint against a first instance court ruling, as set out in provision of Article 4 of the Law, may be considered a clear and fair element of the mechanism of controlling the execution of a court decision as an integral part of the right of access to a court.

According to the provisions of the Law, which are impugned by V. Lopushansky, a deliberation of an appellate or cassation complaint against a court ruling upon deliberation of a complaint filed under Article 447 of the Civil Procedure Code is associated with the need for a person to pay a court fee, the Constitutional Court of Ukraine states that there was an unjustified interference with the recoverer’s right of access to a court, since a person who paid the court fee for filing a claim with the court, gained access to the court and obtained a binding court decision in his/her favour, has to pay an additional (repeated) court fee for judicial review over the execution of the court decision.

The state failed to create adequate legal mechanisms for exercising the right of access to a court, as well as the lack of real judicial review at the stage of execution of a court decision, since there is a complication of the practical exercise of the right of access to a court by a person (recoverer in enforcement proceedings), which is a violation of the constitutional principles of justice and the principles of civil procedure law.

Thus, the Constitutional Court of Ukraine declared Articles 3.2, 4.2.1.9 of the Law as inconsistent with the Constitution (are unconstitutional) in that they allow for the collection of court fees when filing appellate and cassation complaint against a court ruling issued upon the adoption of the deliberation of a complaint against a decision, actions or inactions of a state enforcement officer or other official of the state enforcement service or a private enforcement officer in the course of execution of a court decision delivered in accordance with the Civil Procedure Code of Ukraine.

The provisions of the Law declared unconstitutional in this aspect shall cease to be effective six months after the date of this Decision delivery by the Constitutional Court of Ukraine.

**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, 04.11.1950.

**Cross-References:**

Constitutional Court of Ukraine:

* no. 3-rp/2003, 30.01.2003;
* no. 13-rp/2011, 02.11.2011;
* no. 18-rp/2012, 13.12.2012;
* no. 12-rp/2013, 28.11.2013;
* no. 10-r/2018, 23.11.2018;
* no. 2-r(II)/2019, 15.05.2019;
* no. 4-r(II)/2020, 17.06.2020;
* no. 6-r(II)/2020, 24.06.2020;
* no. 2-r(II)/2022, 06.04.2022;
* no. 2-r(II)/2023, 01.03.2023;
* no. 4-r(II)/2023, 19.04.2023.

European Court of Human Rights:

* Zubac v. Croatia, no. 40160/12, 05.04.2018;
* Aksoy v. Turkey, no. 21987/93, 18.12.1996;
* Shmalko v. Ukraine, no. 60750/00, 20.07.2004;
* Ivanov v. Ukraine, no. 40450/04, 15.10.2009;
* Р.G. and J.H v. The United Kingdom, no. 44787/98, 25.09.2001;
* Luciano Rossi v. Italy, no. 30530/96, 15.11.2002;
* Apostol v. Georgia, no. 40765/02, 28.11.2006.