**Summary to the Decision of the First Senate of the Constitutional Court dated September 13, 2023 No. 7-r (І)/2023 in the case upon the constitutional complaint of Mykola Kostina regarding the constitutionality of the provision of paragraph 26 of Section VI “Final and Transitional Provisions” of the Budget Code**

M. Kostina applied to the Constitutional Court with a request to verify the constitutionality of the provisions of paragraph 26 of Section VI “Final and Transitional Provisions” of the Budget Code (hereinafter referred to as the Code). This paragraph defines the particular application of Articles 20, 21, 22, 23, 30, 31, 37, 39, 48, 50, 51, 52 and 54 of the Law “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” dated February 28, 1991, No. 796-XII as amended (hereinafter referred to as Law No. 796). These articles establish the legislative mechanism for compensating and granting benefits to citizens affected by the Chornobyl disaster and provide for additional payments to citizens who particularly are working in the exclusion zone, who suffered health damage, and those who lost their breadwinners. In the context of the constitutional proceedings, the impugned paragraph of the Code stipulated that compensation, benefits and additional payments are made in the manner and amounts established by the Cabinet of Ministers, based on the available financial resources of the state and local budgets and the budgets of the compulsory state social insurance funds.

The subject of the right to a constitutional complaint believes that the impugned provision of the Code narrows the content and scope of the guarantees of social protection of citizens affected by the Chornobyl disaster previously established by the state. In addition, the impugned provision puts the implementation of such guarantees in dependence on the available financial budgetary resources, which violates the principle of the rule of law enshrined in the Constitution.

Citizens have the right to social protection in cases established by both the Constitution and the laws. The Verkhovna Rada is responsible for legislative regulation of the state’s social policy, adhering to constitutional norms and principles.

The Constitutional Court emphasises the fundamental nature of the state’s positive obligation towards citizens affected by the Chornobyl disaster and the need to grant such persons a special status and provide them with enhanced social protection.

Persons affected by the Chornobyl disaster are in need of additional social protection guarantees in connection with its consequences. Benefits, compensations and guarantees established by Law No. 796 are a special form of compensation for lost health, physical and mental suffering, and restrictions on the exercise of such persons’ abilities.

Under Article 49.1 of Law No. 796, pensions for persons in categories 1, 2, 3, 4 are established in the form of a state pension; an additional pension for damage to health, which is granted after the right to a state pension has been established. The procedure for granting state and supplementary pensions to persons in Category 1 is provided for in Articles 50 and 54 of Law No. 796.

Article 50 of Law No. 796 does not directly set out the amount of the monthly additional pension for health damage to persons in Category 1.

The Procedure for Calculating Pensions for Persons Affected by the Chornobyl Disaster specifies the pension amounts for those impacted by the disaster. This regulatory act is approved by the Resolution of the Cabinet of Ministers “On Improving the Level of Social Protection of Citizens Affected by the Chernobyl Disaster” No. 1210 dated November 23, 2011, as amended (hereinafter referred to as the Procedure).

Article 54 of Law No. 796 determines the amount of a disability pension for persons in Category 1, which occurred due to an injury or illness caused by the Chornobyl disaster, while the Cabinet of Ministers only establishes the procedure for granting such a pension.

The Constitutional Court notes that Law No. 796 is a special law, it defines the main provisions for the constitutional right of citizens affected by the Chornobyl disaster to protect their life and health, including the procedure for pension provision for such persons. Therefore, the Court underlines that the social guarantees for this category of persons, in particular the amount of pension provision, should be provided by the legislator exclusively in Law No. 796.

The Cabinet of Ministers is empowered to establish the procedure for granting state pensions to persons referred to Category 1 as well as in connection with the loss of the breadwinner, as defined by Article 54 of Law No. 796. However, the impugned provisions of the Code provided that the Cabinet of Ministers establishes not only the procedure, but also the amount of the state pension for the above category of persons with regard to the available financial resources of the state and local budgets, as well as the budgets of the compulsory state social insurance funds.

The provision of the impugned paragraph of the Code, which stipulates that compensation, benefits and additional payments are made by the Cabinet of Ministers of Ukraine in accordance with the procedures and amounts based on the above-mentioned available financial resources, creates conditions under which citizens affected by the Chornobyl disaster (namely, persons classified as Category 1 and persons who are entitled to a breadwinner’s pension) have been placed in a situation of legal uncertainty regarding the amount of state pension payments. This situation, which has arisen as a result of the application of the impugned provisions, does not meet the requirement of legal certainty (predictability) as an integral element of the rule of law.

The provision of paragraph 26 of Section VI “Final and Transitional Provisions” of the Code, according to which the norms of Article 50, 54 of Law No. 796 are applied in the manner and amounts established by the Cabinet of Ministers, based on the available financial resources of the state and local budgets and budgets of the funds of compulsory state social insurance, does not affect the content and scope of the constitutional right to social protection of persons affected by the Chornobyl disaster, as it neither changes the amount of their pensions nor contradicts Articles 22.3 and 46.1 of the Constitution.

The Court concluded that the provision of paragraph 26 of Section VI “Final and Transitional Provisions” of the Code in the part of application of Article 54 of Law No. 796 is unconstitutional. The Court also found that the provision of paragraph 26 of Section VI “Final and Transitional Provisions” of the Code in the part of the application of the norms and provisions contained in Article 50 of Law No. 796 is consistent with the Constitution of Ukraine (is constitutional).

**References**

Decisions of the Constitutional Court:

No. 10-rp/2001 dated June 20, 2001,

No. 2-rp/2016 dated June 1, 2016,

No. 6-r/2018 dated July 17, 2018,

No. 9-r/2018 dated November 7, 2018,

No. 12-r/2018 dated December 18, 2018,

No. 3-r(I)/2019 dated June 5, 2019,

No. 1-r/2020 dated January 23, 2020,

No. 3-r/2020 dated February 20, 2020,

No. 5-r(II)/2020 dated June 18, 2020,

No. 1-r(II)/2021 dated April 7, 2021,

No. 9-r(II)/2022 dated November 16, 2022,