**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 12-r(II)/2024 dated December 18, 2024 in the case upon the constitutional complaint of Kyrylo Burma regarding the compliance of the provisions of Article 51 of the Civil Code of Ukraine (on the constitutional guarantees of the rights of individual entrepreneurs) with the Constitution of Ukraine (constitutionality)**

Kyrylo Burma appealed to the Constitutional Court of Ukraine to verify the compliance of Article 51 of the Civil Code (hereinafter, the “Code”) with the Constitution of Ukraine (constitutionality).

Under Article 51 of the Code, “the regulations applicable to the entrepreneurial activities of individuals shall be those regulating the entrepreneurial activities of legal entities, unless otherwise provided by law or arising from the nature of the relations.”

Compliance with the constitutional guarantees of free development of entrepreneurship is important not only for the effective development of the market economy, self-employment and funding the State Budget of Ukraine, but also for strengthening such fundamental values of the constitutional order of Ukraine as democracy and the rule of law. The relations between the state and entrepreneurship should embody the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine (passage five of the Preamble of the Constitution of Ukraine).

The legislator has defined freedom of entrepreneurial activity, which is not prohibited by law, as one of the general foundations of civil law (Article 3.4 of the Code). Ensuring economic diversity and equal protection by the state of all business entities, freedom of entrepreneurial activity within the limits established by law are general principles of business activity in Ukraine (Articles 6.2, 6.3 of the Commercial Code of Ukraine).

The freedom of the individual, embodied in the right to entrepreneurial activity not prohibited by law, guaranteed to everyone by Article 42.1 of the Fundamental Law, contributes to the realization of a number of other constitutional rights, including the right to property (Article 41 of the Constitution of Ukraine).

The legal status of an individual is based on human rights and freedoms guaranteed by the Constitution of Ukraine.

If an individual exercises the constitutional right to entrepreneurial activity, his or her legal status additionally acquires the powers arising from the status of an entrepreneur. At the same time, the legal status of an entrepreneur does not limit the scope of human rights and freedoms guaranteed by the Constitution of Ukraine.

An individual is endowed with the full range of rights and freedoms guaranteed by the Constitution of Ukraine, while a legal entity is endowed with only those rights and freedoms that are compatible with its nature. In exercising the right to entrepreneurial activity not prohibited by law, individuals may carry out such activity both without establishing a legal entity (registration of an individual entrepreneur) and by establishing a legal entity.

The legislator may, at its own discretion, differentially regulate the status (rights and obligations) of individual entrepreneurs and legal entities engaged in entrepreneurial activity, or legislatively equalize their rights and obligations in this regard. However, different approaches of the legislator to regulating the legal status of these groups of entrepreneurs should in any case be consistent with the constitutional guarantees of protection of human rights and freedoms.

Individual entrepreneurs shall not be deprived of the protection guarantees set forth in the Constitution of Ukraine as a result of legislative regulation in the field of entrepreneurship.

The Constitutional Court of Ukraine concludes that the principle of equality is not absolute, and the legislator may apply a differentiated approach to the regulation of rights and obligations if such an approach is objectively justified in view of the purpose of such regulation (e.g., substantial public interest), proportionate to the purpose and consistent with the requirements of Article 24.2 of the Constitution of Ukraine. However, the same approach (equal treatment) in regulating the status of entities in different positions may also be unjustified.

The content of the impugned provisions of the Code shows that, although they define a general model of normative regulation of entrepreneurial activity of individual entrepreneurs, they do not directly establish specific rights and obligations for such persons.

In addition, although the disputed provisions of the Code state that the legal acts regulating the entrepreneurial activities of legal entities apply to the entrepreneurial activities of individuals, they do not directly define the content of such legal acts, including those that would impose restrictions on individual entrepreneurs.

The Constitutional Court of Ukraine concluded that different legislative regulation of the activities of these categories of entities in the course of their entrepreneurial activity, including a possible difference in their status, which follows from the content of Article 51 of the Code, does not violate the principles of equality of constitutional rights and freedoms and equality before the law established by Articles 21, 24.1, 24.2. of the Constitution of Ukraine.

Even in cases where the legislator provides for the applicability to individual entrepreneurs of legal acts regulating the entrepreneurial activities of legal entities, the guarantees established by Article 58.1 of the Constitution of Ukraine (an exception to the principle of non-retroactivity of law) are directly applicable to individual entrepreneurs.

The provision of Article 51 of the Code “normative legal acts regulating entrepreneurial activity of legal entities” embodies the understanding of the Constitution of Ukraine as the primary source for both normative regulation and application of law in all areas of social relations, including entrepreneurial activity.

The Constitutional Court of Ukraine declared Article 51 of the Civil Code of Ukraine as compliant with the Constitution of Ukraine (as constitutional).

**Supplementary information:**

* Charter on Fundamental Rights of the European Union of 2000;
* Universal Declaration of Human Rights of 1948;
* International Covenant on Civil and Political Rights of 1966;
* Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms;
* Report on the rule of law – Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011) [CDL-AD(2011)003rev]

**Cross-References:**

Constitutional Court of Ukraine:

* no. 1-zp/1997, 13.05.1997;
* no. 1-rp/1999, 09.02.1999;
* no. 3-rp/2001, 05.04.2001;
* no. 8-rp/2007, 16.10.2007;
* no. 1-rp/2011, 26.01.2011;
* no. 1-rp/2013, 05.02.2013.

European Court of Human Rights:

* *Hämäläinen v. Finland*, no. 37359/09, 16.07.2014;
* *Scoppola v. Italy (№ 2)*, no. 10249/03, 17.09.2009.

Court of Justice of the European Union:

* C-134/15, 30.06.2016, *Lidl GmbH & Co. KG v Freistaat Sachsen*.