**Summary to the Decision of the Second Senate of the Constitutional Court of April 6, 2022 No. 1-r (II)/2022 in the case upon the constitutional complaint of Serhiy Polishchuk regarding the compliance of paragraph 4 of Article 16³ of the Law “On Social and Legal Protection of Servicemen and Members of Their Families” with the Constitution of Ukraine (constitutionality) (case on enhanced social protection of servicemen)**

S. Polishchuk appealed to the Constitutional Court to declare as such that does not comply with the Constitution (is unconstitutional) paragraph 4 of Article 16³ of the Law “On Social and Legal Protection of Servicemen and Members of Their Families” of December 20, 1991 No. 2011-XII as amended (hereinafter referred to as “the Law”).

The subject of the right to constitutional complaint considers that the disputed provisions of the Law are not in conformity with Articles 3, 8.1, 8.2, 17.5, 21, 22.2, 22.3, 24.1, 46.1, 64.1 of the Constitution, as they violate the right to social protection, the principle of equality before the law; do not provide equal and appropriate conditions of social protection for servicemen and persons discharged from military service; narrow the scope and content of the existing rights of these persons by establishing discriminatory conditions under which such persons are limited in time to receive one-time cash assistance.

The Constitutional Court notes that Article 17.5 of the Constitution states that the exercise of the right to social protection of persons serving in the Armed Forces of Ukraine and other military formations, as well as members of their families requires quality and effective legislative regulation and mechanisms to ensure their state support. Such legislative regulation is carried out within the limits of its constitutional powers by the Verkhovna Rada of Ukraine, which, having the discretion, determines the scope of social protection of servicemen, embodying the content of relevant constitutional principles in order to ensure a fair compensation mechanism but without violating the very essence of the constitutional right to social protection, especially in the event of such persons losing their ability to work.

The Constitutional Court considers that, taking into account the requirements of Article 17.5 of the Constitution, the purpose of legislative regulation in this area is both comprehensive social security for servicemen, which will compensate for statutory restrictions and conditions of service inherent in this category of citizens, and increase the motivation of the personnel of the Armed Forces of Ukraine in the performance of their functions related to the defense of Ukraine, protection of its sovereignty, territorial integrity and inviolability (Article 17.2 of the Basic Law). In addition, the subject of legislative regulation of social protection of servicemen are issues related to the fact that the status of servicemen entails a high risk of injury, damage to health or even death while performing duties during defending the Motherland.

The Constitutional Court notes that although the legislator has a wide range of discretionary powers in this matter, this does not preclude an assessment of legislative regulation for compliance with the Constitution of Ukraine, in particular in the aspect of receiving a one-time cash assistance in a larger amount due to the deterioration of a person's health.

The impugned provisions of the Law set special requirements for the appointment and payment of one-time cash assistance, in particular, the restriction in time of the right of servicemen, conscripts or reservists to receive one-time cash assistance in a larger amount taking into account the previously paid amount, when changing the disability group, increase the percentage of disability. By regulating by the Law the procedure for exercising the right to special one-time cash assistance in large amounts due to deteriorating health, the legislator has provided a fair, differentiated approach to compensation for damage to their health depending on its severity. Such a right arises in a special subject only if a causal link is established between the injury (contusion, trauma or injury) received by a person in the course of military service or as a result of an illness related to his/her military service and the further deterioration of his/her health. At the same time, the disputed provisions of the Law establish a suspensive (preclusive) two-year term for exercising the right to receive one-time cash assistance in a larger amount, i.e. the term associated with the existence (emergence or termination) of the right and its expiration causes loss of such right.

The relationship between the goal and the means to achieve it must meet the requirements of the principle of proportionality, which ensures a fair balance between the requirements of general interest and the need to ensure individual rights, according to which the goals of human rights restrictions must be substantial and for persons whose rights are limited.

The disputed provisions of the Law are state interference in the statutory right to receive one-time cash assistance in a larger amount, as it is to limit its implementation through the establishment of temporal characteristics (time interval), and, consequently, narrows its implementation to the circle of persons who apply to the authorised bodies of state power within this period. Establishing a time limit for the exercise of a person's statutory right is a matter for the legislator, but provided that it does not violate the essence of the right, has a legitimate aim and is achieved by reasonable means, then it is fair and objectively justified. Assessing such state intervention in the manner prescribed by paragraph 4 of Article 16³ of the Law, the Constitutional Court concludes that the legislative restriction on the right to receive one-time cash assistance in a larger amount of two years does not affect the right to social protection of servicemen, conscripts or reservists in this aspect.

The Constitutional Court considers that the content of the provision of Article 46.1 of the Basic Law does not guarantee the establishment by the legislator of a one-time cash assistance for this category of persons and, accordingly, its amount, as these issues belong to the scope of discretion of the Verkhovna Rada in the implementation of the blanket constitutional provision (“and in other cases provided by law”).

Although the very existence of the right to one-time cash assistance established by the provisions of Article 16 of the Law depends on the legislator's discretion, the Constitutional Court concluded that if the Law introduces one-time cash assistance and appropriate legislative regulation of the procedure for exercising this right must be compatible with the Constitution, in particular to embody its fundamental values.

Clarifying the purpose of such a legislative restriction on the exercise of this person's right, the Constitutional Court sees its legitimate content in the regulation of one-time cash assistance in the increased size at change of group of disability, increase in percent of disability, in prevention of abuses of the persons applying for its reception.

Determining the legitimacy of the purpose of the restriction established by law, the Constitutional Court came to the conclusion that the means chosen by the legislator to achieve it (a time limit of two years), although it is rationally related to it, however, it cannot be considered relevant to the achievement of the objective, as it does not confirm that the deterioration of the health of this category of persons caused by injury (contusion, trauma or injury) during service in the Armed Forces cannot occur after the expiration of the established term. At the same time, the Constitutional Court came to the following conclusion: if there is a restriction of the right of servicemen to social protection in case of state intervention by adopting a normative act, the public authority that adopted such a normative act is responsible for justifying such a restriction.

The imposition of such a legislative restriction is unjustified also given that the legislator had the opportunity to choose a means to achieve the same goal, which would be less burdensome to affect the exercise of the rights of servicemen to social protection. The analysis of the Law shows that the cases of omission of such a term for exceptional reasons, recognition by the relevant authorities of the reasons for its omission in the presence of objectively insurmountable circumstances related to real significant obstacles or difficulties for timely action and confirmed appropriate evidence. Based on the above, the Constitutional Court concluded that the restrictions on the right to one-time cash assistance established by the disputed provisions of the Law do not meet the requirements of proportionality.

Taking into account the functional purpose of the Armed Forces established by the Constitution, in the conditions of the ongoing armed aggression of the Russian Federation against Ukraine, legislative regulation of the procedure for exercising the right to social protection guaranteed by Article 46.1 of the Constitution, should be carried out in a systematic relationship with the requirements for enhanced social protection of servicemen within the meaning of Article 17.5 of the Basic Law. Soldiers and other citizens involved in the performance of state defense duties perform the duty to defend the Motherland in the Armed Forces and other military formations not for the purpose of obtaining special statuses, including privileges, benefits or compensations. At the same time, the provision of Article 17.5 of the Constitution clearly imposes on the state a constitutional obligation to create a system of enhanced social support for servicemen and members of their families, which applies not only to special pensions and benefits, but also support in health care, education and as well as the provision of housing and special support measures during their transition to civilian life. The fulfilment by the state of the constitutional obligation to ensure enhanced social protection of servicemen, conscripts or reservists is designed not only to ensure social protection of each of them individually, but also to promote the fulfilment of Ukrainian citizens' duty to protect the Motherland - Ukraine, its sovereignty, independence and territorial integrity. Considering that the settlement of relevant issues is the discretion of the Verkhovna Rada, the Cabinet of Ministers and other public authorities within their constitutional powers, the Constitutional Court also emphasises that measures in the field of national defense must be timely, consistent and comprehensive, as their effective implementation depends on the state of Ukraine's defense capabilities.

Under martial law, the state is obliged to mobilise all available resources to strengthen its defense capabilities and repel the armed aggression of the Russian Federation against Ukraine. Therefore, the comprehensive support of the Armed Forces is one of the means of expanding the state's defense capabilities.

Therefore, the restrictions imposed by the disputed provisions of the Law on the payment of one-time cash assistance in the event of a higher disability group (or a higher percentage of disability) for only two years are unjustified and such that disproportionately restricting the right to enhanced social protection of servicemen, guaranteed by Article 46.1 of the Constitution in conjunction with Article 17.5.

Therefore, the disputed provisions of the Law, which limit the payment of one-time cash assistance in the event of a higher disability group (or a higher percentage of disability) for only two years, are inconsistent with fundamental constitutional values, in particular such as the principle of respect for the protection of human rights, the rule of law in terms of proportionality and requirements for social protection of servicemen (Articles 3, 8, 17, 46 of the Constitution).

Thus, the Constitutional Court of Ukraine held to declare paragraph 4 of Article 16³ of the Law “On Social and Legal Protection of Servicemen and Members of Their Families” of 20 December 1991 as such that does not comply with the Constitution of Ukraine (is unconstitutional). It shall lose its effect from the day of delivering this Decision by the Constitutional Court.

**References:**

Decisions of the Constitutional Court of Ukraine:

* No. 7-rp/2004 of March 17, 2004;
* No. 1-rp/2005 of March 17, 2005;
* No. 8-rp/2005 of October 11, 2005;
* No. 9-rp/2009 of April 28, 2009;
* No. 20-rp/2011 of December 26, 2011;
* No. 2-rp/2016 of June 1, 2016;
* No. 7-rp/2016 of December 20, 2016;
* No. 5-r/2018 of May 22, 2018;
* No. 9-r/2018 of November 7, 2018;
* No. 12-r /2018 of December 18, 2018;
* No. 6-r/2019 of June 20, 2019.