**Summary to the Decision of the Second Senate of the Constitutional Court of April 6, 2022 No.2-r(II)/2022 in the case upon the constitutional complaint of Polina Marho regarding the compliance with the Constitution (constitutionality) of Articles 454.5.1 and 454.7 of the Code of Civil Procedure**

Polina Marho appealed to the Constitutional Court to consider the issue of compliance with the Constitution (constitutionality) of papagraph 1 of Article 454.5, Article 454.7 of the Code of Civil Procedure (hereinafter referred to as the Code). According to Article 454.5.1 of the Code, an application for annulment of the decision of the arbitral court shall be filed within ninety days “by a party, a third party in a case considered by the arbitration court – from the date of the decision of the arbitration court”. Article 454.7 of the Code stipulates: “an application filed after the expiration of the period established by parts 5 or 6 of this Article shall be returned”.

The complainant claims that as a result of the application by the court of Articles 454.5.1, 454.7 of the Code, her right to access to the court, guaranteed by Article 55 of the Constitution, has been violated.

The provisions of Articles 8, 55.1 of the Constitution oblige the State to guarantee, at the legislative level, everyone the possibility of exercising his/her right to judicial protection. The legislator must establish the scope of the right of persons to judicial protection, which would ensure its effective implementation, and the refusal of courts to exercise this opportunity may lead to a violation of the right to judicial protection guaranteed by the Constitution. In the context of the consideration of P.Marho’s constitutional complaint, the scope of judicial protection established by the legislator in relation to the appeal against the decision of the arbitration court should be ensured through effective judicial control.

It follows from Article 125 of the Constitution that arbitration courts are not a part of the judicial system, and hence, the decision of the arbitration court is not an act of justice.

Consequently, arbitration courts are not state bodies, they are not included in the system of the judiciary, they do not administer justice. Appeal to the arbitration courts regarding the consideration and resolution of legal disputes within their competence, which is based on the free will of the parties to the dispute, is deemed to be one of the ways to exercise the right of every person, guaranteed by Article 55.6 of the Constitution, to defend his/her rights and freedoms by any means not prohibited by the law against violations and unlawful encroachments.

In terms of consideration of the constitutional complaint filed by P.Marho, the Constitutional Court notes that the right to judicial protection is guaranteed by Article 55.1 of the Constitution and encompasses not only the right to appeal to the court, but also the possibility of exercising this right without restrictions or obstacles, and, in particular, guarantees the person the right to appeal in court the decision of the arbitral tribunal.

By adopting the Law No.2147-VIII, according to which the Code is set out in the new version, the legislator has deprived persons who are the parties, third parties in the case, considered by the arbitration court, the guarantee of consideration by the court of the issue of renewing the deadline for filing an application to the court in order to cancel the decision of the arbitration court, if it was filed after the expiration of the period established by the Code, while according to the provisions of the Code as amended by the Law No.2147-VIII, they had such a guarantee.

The Constitutional Court has come to the conclusion that by adopting the Law No.2147-VIII, according to which the Code is set out in the new version, the legislator reduced the level of access to the court of persons who are entitled to appeal to the court in accordance with Article 454.5.1 of the Code, which has limited their right to judicial protection to the extent guaranteed by Article 55.1 of the Constitution. Accordingly, the prohibition of narrowing the content and the scope of existing rights and freedoms in the adoption of new laws or amendments to the current laws, established in Article 22.3 of the Constitution, was violated. Consequently, this has negated the possibility of effective exercise of the right to judicial protection and the effectiveness of the mechanism of judicial control over the decision of the arbitration court.

The Constitutional Court acknowledges that the established by the Constitution equality of all people in their rights and freedoms means the integrity of ensuring equal legal opportunities for them, both of material and procedural nature. This is vital for the realisation of the rights and freedoms, which are inherently the same in their content and scope. In a state governed by rule of law, appeal to the court is a universal mechanism for protecting the rights, freedoms and legitimate interests of individuals and legal entities, and adherence to the general principles of equality of citizens before the law and the prohibition of discrimination, which are determined by the provisions of Articles 24.1 and 24.2 of the Constitution, is an indispensable component of the exercise of the right to judicial protection.

Comparative analysis of the provisions of the Code of Commercial Procedure, which regulate the procedure for appealing the decision of the arbitration court (Article 346), and the provisions of the Code of Commercial Procedure as amended by the Law No.2147-VIII, which regulated the same issue (Article 1221), indicates that the legislator, having adopted the Law No.2147-VIII, established the possibility of renewing the missed deadlines for appealing the decision of the arbitration court for the parties (third parties) to the dispute in arbitration court, and therefore ensured the effective implementation of their right to judicial protection. A similar approach of the legislator can be traced in the issue of resolving the procedure and terms of filing an application for recognition and granting permission to enforce the decision of international commercial arbitration.

Taking into account the fact that according to the provisions of the Code, it is not possible to renew the missed deadline for submission by an individual party, a third party in a case in which an arbitration court has resolved, a dispute on civil legal relations, an application to cancel the decision of the arbitral tribunal, while such a possibility (renewal of the missed period for appealing the decision of the arbitration court) exists for legal entities under the provisions of the Code of Commercial Procedure, there are grounds for concluding that there is a difference in the legislator’s attitude to the participants of private relations – individuals and legal entities of private law, providing them with various legal opportunities of a procedural nature for the implementation of the Constitution guaranteed by these persons of the same content and scope of the right to judicial protection. The mentioned above is sufficient to constitute a non-compliance of Articles 454.5.1, 454.7 of the Code in their interrelationship with Articles 8.1, 24.1, 24.2 of the Constitution.

Thus, the Constitutional Court of Ukraine held that in accordance with the disputed Articles 454.5.1, 454.7 of the Code of Civil Procedure it is impossible for a court to renew the deadline for a party, a third party in a case considered by the arbitration court, to set aside the arbitration courts’ decision. Referred legislative provisions were found to be inconsistent with the Constitution (unconstitutional). Aforementioned articles shall be deemed invalid after three months from the date of termination or cancellation of martial law, imposed by the Decree of the President “On the introduction of martial law in Ukraine” of February 24, 2022 No.64/2022 with subsequent amendments.

The Verkhovna Rada within three months from the date of termination or cancellation of martial law, imposed by the Decree of the President “On the introduction of martial law in Ukraine” of February 24, 2022 No.64/2022 with subsequent amendments shall bring the normative regulation established by paragraph 1 of Article 454.5, Article 454.7 of the Code of Civil Procedure, in accordance with the Constitution and this Decision.

**References:**

Decisions of the Constitutional Court of Ukraine:

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No.8-rp/2002 of May 7, 2002,

No.3-rp/2004 of February 24, 2004,

No.9-rp/2012 of April 12, 2012,

No.2-rp/2016 of June 1, 2016,

No.5-r/2018 of May 22, 2018,

No.4-r/2019 of June 13, 2019.

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,

Judgments of the European Court of Human Rights:

Delcourt v.Belgium of 17 January 1970 (application No. 2689/65),

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Mushta v. Ukraine of 18 November 2010 (application No. 8863/06),

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