**Summary to the Decision of the Second Senate of the Constitutional Court No. 2-r(ІІ)/2023 dated March 1, 2023 in the case upon the constitutional complaint of Viacheslav Pleskach regarding the conformity of the provisions of Articles 294.1 and 383.6 of the Code of Administrative Procedure with the Constitution (constitutionality) (regarding the equality of the parties during judicial control over the court decision execution)**

Viacheslav Pleskach (hereinafter referred to as “the Applicant”) appealed to the Constitutional Court to examine the compliance of the provisions of Articles 294.1 and 383.6 of the Code of Administrative Procedure (hereinafter referred to as “the Code”) regarding the “prohibition to challenge in appeal the decision on the refusal to ssatisfy the application submitted in accordance with Article 383 of the Code” with the Constitution (constitutionality).

Article 294.1 of the Code establishes a list of decisions of the court of first instance against which appeals may be filed separately from the court decision.

According to Article 383.6 of the Code, “in the absence of circumstances of illegality of the relevant decisions, actions or inaction of the subject of authority - the defendant and violation by him/her of the rights, freedoms, interests of the person-plaintiff, the court leaves the application unsatisfied. If there are grounds for satisfying the application, the court delivers a decision in the manner prescribed by Article 249 of this Code”.

The applicant appeals to examine the contested provisions of the Code for compliance with Articles 24.1, 55.2, 125.5, paragraphs 1, 3, 8 of Article 129.2 of the Constitution.

The Constitutional Court of Ukraine noted that the obligation of the state, represented by the body of legislative power, to introduce a legal mechanism for the implementation of a person's right to judicial protection, in particular in the area of judicial protection of a person's rights and freedoms in the sphere of relations under public law, stems from the principle of the rule of law and the requirement to establish and ensure the right a person for judicial protection, which is defined as a general right in Article 55.1 of the Constitution of Ukraine, and in Article 55.2 of the Constitution of Ukraine the guaranteed right to appeal to the court decisions, actions or inaction of public authorities, their officials and public servants is distinguished. Such a legal mechanism should ensure the effectiveness of a person's right to judicial protection, which is manifested in the introduction by law of procedural opportunities for the real protection and restoration of violated rights and freedoms of a person, especially in a situation where this violation is caused by the decisions, actions or inaction of public authorities, their officials and public servants.

Such a legal mechanism should ensure the effectiveness of a person's right to judicial protection, which is manifested in the introduction by law of procedural opportunities for the real protection and restoration of violated rights and freedoms of a person, especially in a situation where this violation is caused by the decisions, actions or inaction of public authorities, their officials and public servants.

 In a state governed by the rule of law, the legal mechanism for exercising the right to appellate review of a case must ensure the effectiveness of a person's right to judicial protection and the ability to prevent the negative consequences for a person of a possible judicial error of the court of first instance. In order not to act arbitrarily when establishing restrictions or prohibitions on appeals of certain procedural court decisions (rulings), the legislator must, in particular, take into account the legal consequences that arise for a person as a result of delivering a court decision (ruling), the availability of other effective mechanisms for the protection and restoration of violated rights and freedoms of a person established by the procedural law.

The Constitutional Court observes that the final guarantee of the realisation of a person's right to judicial protection is to ensure the principle of equality of all participants in the legal process before the law and the court in the manner of normative determination of equal procedural opportunities (scope of rights) of the participants in the legal process that correspond to their procedural position, including the right to appeal court decisions through the appellate procedure.

The Constitutional Court emphasises that the principle of equality of all participants in the legal process before the law and the court must be ensured during the trial of any case in the court of first instance and during appeal proceedings. The unequal scope of the right to judicial protection, in particular the right of a participant in court proceedings to appeal court decisions, must be objectively and reasonably justified. Otherwise, it will be a disproportionate restriction of a person's right to appeal court decisions, will violate the principle of equality of all participants in the legal process before the law and the court, will be incompatible with the requirement of a fair trial as a component of the right to a fair trial, and therefore will cause a violation of the right to judicial protection.

The Constitutional Court stresses that the exercise of public authority in an orderly manner requires that a person be granted the opportunity to effectively challenge the acts of public authorities, their officials and public servants, their actions or inaction, which ensures the accountability of these authorities and their officials and public servants for their decisions, actions or inaction. Therefore, administrative justice is a key element of democratic governance, and its effectiveness is essential for any society based on the rule of law.

In the protection of human rights and the observance of the rule of law, a key element is the right of a person to challenge the decisions, actions or inaction of public authorities, their officials and public servants in the manner of using fair procedural rules of law in every case, when as a result of such decisions, actions or inaction rights, freedoms and interests of a person are violated.

The purpose of the national system of administrative justice is to ensure judicial control over the decisions, actions or inaction of public authorities, their officials and public servants in accordance with the procedure consistent with the requirements of a fair trial.

The Constitutional Court emphasises that in legal relations between a person - on the one hand, and the state (in the form of state authorities) and other public authorities - on the other, the person is always the weaker party. Thus, administrative courts should operate in a state governed by the rule of law, the purpose of which is to protect the person against the state.

The Constitutional Court concludes that it follows from the provisions of Article 3.2 of the Constitution in a substantive conjunction with the provisions of Articles 8.1, 55.1, 55.2, 125.5, paragraphs 1, 8 of Article 129.2 of the Constitution that the legislator in order to ensure the effectiveness of the rule of law, the rights of persons to judicial protection in administrative proceedings, guarantees of its implementation, the purpose of the activity of administrative courts should implement such a legal mechanism for the implementation of administrative proceedings, under which a person in a judicial process will not be in a worse procedural position as compared to the state in the form of state authorities, as well as other public authorities, their officials and public servants, and will have a real procedural opportunity to protect and restore their violated rights, freedoms and interests, in particular, thanks to the availability of the necessary scope of the right to judicial protection.

The Constitutional Court notes that the obligation of the state to ensure the mandatory execution of a court decision delivered in favour of a person for the real protection and renewal of his/her rights, freedoms, interests that have been violated as a result of decisions, actions or inaction by public authorities, their officials and public servants stems from the principle of the rule of law and the requirement to establish and ensure the right of a person to judicial protection in administrative proceedings. The failure of the state to fulfil this duty contradicts the provisions of Articles 129.2.9, 129¹.2, and 129¹.2 of the Constitution and leads to a violation of the individual's right to judicial protection, undermines the effectiveness of administrative proceedings, and is therefore incompatible with the principle of the rule of law established by Article 8.1 of the Constitution.

The Constitutional Court notes that judicial control over the execution of a court decision is the very first element in the legal mechanism for ensuring the execution of a court decision, especially in the case when such a court decision is delivered in favour of a person in a legal dispute against public authorities, their officials and public servants.

In order to ensure the execution of a court decision, the state must first of all introduce an effective, not illusory, legal mechanism of judicial control over the execution of a court decision, which will allow the person in whose favour the court decision was delivered to achieve its implementation in order to really protect and restore rights, freedoms and interests, that were violated as a result of decisions, actions or inaction by public authorities, their officials and public servants.

Article 383 of the Code, the provisions of which are disputed by the Applicant, establishes one of the mechanisms of judicial control in administrative proceedings for the execution of a court decision delivered in favour of a person, namely: the procedure for recognising illegal decisions, actions or inactions committed by a subject of authority - the defendant for decision execution. That is, the plaintiff may appeal for the declaration of unlawful decisions, actions or inactions committed by the subject of authority - the defendant to execute the court's decision, only after the court's decision has been delivered and became effective.

As a result of deliberation of the application submitted in accordance with Article 383 of the Code, the court delivers: a decision to leave the application unsatisfied (in the event that the illegality of the relevant decisions, actions or inaction of the subject of authority - the defendant and violation of the rights, freedoms, interests of the person-plaintiff is not established) or a separate ruling (in the case of establishing the illegality of relevant decisions, actions or inaction of the subject of the defendant's authority and violation of the rights, freedoms, and interests of the plaintiff).

Article 293 of the Code, which regulates the issue of the right to an appeal, establishes that the participants in the case, as well as persons who did not participate in the case, if the court decided the issue of their rights, freedoms, interests and (or) obligations, have the right to challenge court decisions of the first instance separately from the court decision only in the cases defined by Article 294 of the Code, and the appeal of court decisions that are not defined by Article 294 of the Code separately from the court decision is not allowed (Article 294.2).

That is, Article 294 of the Code defines an exhaustive list of decisions that can be appealed separately from the court decision.

Such rulings include separate rulings (Article 294.1.23 of the Code). The right to appeal individual decisions is also defined by the provisions of Article 249.7 of the Code.

The consequence of such normative regulation was that the person-plaintiff, in whose favour the court delivered a decision, i.e. protected his/her violated rights, freedoms, interests, and who seeks the execution of such a court decision by the defendant - a subject of authority, is deprived of the right to challenge the court decision through an appellate procedure, by which its requirements regarding the recognition of illegal decisions, actions or inactions committed by the subject of authority - the defendant for the execution of the court's decision, were not satisfied.

Resolving the issues raised in the Applicant's constitutional complaint, the Constitutional Court draws attention to the fact that, according to Article 293.3 of the Code, “objections to rulings that are not subject to appeal separately from the court's decision are included in the appeal against the court's decision” (first sentence).

The Constitutional Court states that such a legal mechanism may not be applied to a decision to leave without satisfaction an application submitted pursuant to Article 383 of the Code, as the latter can be adopted only after the court's decision has been delivered and became effective. Therefore, it is the appellate appeal of the decision to leave without satisfaction the application submitted in accordance with Article 383 of the Code, which is the legal mechanism that will allow, firstly, to correct a possible judicial error of the court of first instance, and secondly, to ensure that the subject of authority - the defendant enforces court decision and, as a result, to restore the rights, freedoms, and interests of the plaintiff, in case they have been violated. This conclusion is based on the fact that the provisions of Section IV “Procedural issues related to the execution of court decisions in administrative cases” of the Code do not define other effective mechanisms for the plaintiff to achieve the actual execution by the subject of authority - the defendant of the court decision delivered in favour of such a person.

The Constitutional Court considers that the legislator, having adopted the contested provisions of the Code, which did not establish the right to challenge in appeal the court's decision on leaving without satisfaction the application submitted in accordance with Article 383 of the Code, acted arbitrarily, as it did not take into account its legal consequences for the plaintiff and did not introduce other effective mechanisms for the protection and restoration of the violated rights, freedoms, and interests of the plaintiff, who seeks the execution of the court decision passed in his favour through the court procedure.

The legislator determined the unequal amount of procedural possibilities (rights) of the parties to the administrative process regarding the right to appeal the decisions adopted as a result of the consideration of the application submitted in accordance with Article 383 of the Code, granting the subject of authority the right to appeal a separate decision and not establishing for the person-plaintiff the right to appeal the decision to dismiss the said application, which put the person-plaintiff in a worse procedural position compared to the defendant - a subject of authority, nullifying the purpose of the activity of administrative courts, defined by Article 125.5 of the Constitution.

Normative regulation determined by the contested provisions of the Code, which do not establish the right for the plaintiff to appeal through the appeals procedure the court decision on the rejection of the application submitted pursuant to Article 383 of the Code, putting the plaintiff in a significantly worse procedural position compared to the defendant - the subject of the authority, does not provide equal procedural opportunities to the plaintiff to protect his/her rights, freedoms, and interests through the judicial system.

The legislator, having adopted the disputed provisions of the Code, which did not establish for the complainant the right to appeal through the appeals procedure the decision of the court to leave without satisfaction the application submitted in accordance with Article 383 of the Code, did not fulfil the main obligation imposed on it by the provisions of Article 3.2 of the Constitution of Ukraine, since it did not legally establish effective judicial control over the execution of a court decision, did not ensure the right of a person to judicial protection in administrative proceedings and guarantees of its implementation, such as the equality of all participants in the judicial process before by the law and the court, the right to appellate review of the case, the binding nature of the court decision, which are indispensable requirements of the rule of law as the basis of the constitutional system in Ukraine, expressed through the formula: “In Ukraine, the principle of the rule of law is recognised and effective” (Article 8.1 of the Constitution of Ukraine).

The Constitutional Court of Ukraine stated that the provisions of Articles 294.1 and 383.6 of the Code, in that they make it impossible to appeal the court decision on leaving without satisfaction the application submitted pursuant to Article 383 of the Code, do not correspond to Articles 3.2, 8.1, 55.1, 55.2, 125.5, paragraphs 1, 8, 9 of Article 129.2, and Article 129¹ of the Constitution of Ukraine.

Thus, the Constitutional Court of Ukraine held to declare the provisions of Articles 294.1 and 383.6 of the Code of Administrative Procedure as inconsistent with the Constitution (unconstitutional), in that they make it impossible to challenge in appeal the court decision to leave without satisfaction the application submitted in accordance with Article 383 of the Code of Administrative Procedure.

The provisions of Articles 294.1 and 383.6 of the Code of Administrative Procedure, declared as unconstitutional, shall lose their effect from the date of delivering this Decision.

The Verkhovna Rada shall bring the normative regulation established by the provisions of Articles 294.1 and 383.6 of the Code of Administrative Procedure into compliance with the Constitution and this Decision.

**References:**

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No. 11-rp/2012 dated April 25, 2012,

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