**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 2-r(ІІ)/2024 dated March 20, 2024 in the case upon the constitutional complaint of Vasyl Atamanchuk regarding the conformity of the provisions of Article 2 of the Law of Ukraine “On Measures for Legislative Support of the Pension System Reform” No. 3668-VI dated July 8, 2011, first sentence of Article 67.3 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” No. 796-ХІI dated February 28, 1991 with the Constitution of Ukraine (constitutionality) (regarding the guaranteed level of social protection of citizens affected by the Chornobyl Disaster)**

Vasyl Atamanchuk appealed to the Constitutional Court of Ukraine to verify the compliance of the provisions of Article 2 of the Law of Ukraine “On Measures for Legislative Support of the Pension System Reform” No. 3668-VI dated July 8, 2011, as amended, (hereinafter, “Law No. 3668-VI”), first sentence of Article 67.3 of the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” No. 796-ХІI dated February 28, 1991, as amended (hereinafter, “Law No. 796-ХІI”) with the Constitution of Ukraine (constitutionality).

According to the subject of the right to a constitutional complaint, the provision of Article 2 of Law No. 3668-VI, which extends its effect to Law No. 796-XII, as well as the provision of the first sentence of Article 67.3 of Law No. 796-XII, are such that they do not correspond to Articles 3, 8 , 9.1, 16, 17.5, 22, 41.1, 41.2, 41.4, 41.7, 50.1, and 56, 58.1, 65.1 of the Constitution of Ukraine.

In pursuance with the provision of Article 2 of Law No. 3668-VI, contested by Vasyl Atamanchuk, “the maximum amount of a pension (except for pension payments made from the Accumulative Pension Fund) <...> (taking into account allowances, increases, additional pension, targeted monetary assistance, pensions for special services to Ukraine, indexation and other additional payments to pensions established by law, except for additional payments to allowances for certain categories of persons who have special merit to the Motherland), assigned (recalculated) in accordance with <... > laws of Ukraine <...> “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” <...> may not exceed ten subsistence minimums established for persons who have lost their ability to work.”

Pursuant to the provision of the first sentence of Article 67.3 of the Law No. 796-XII, “the maximum amount of pension (taking into account allowances, increases, additional pension, targeted monetary assistance, pensions for special services to Ukraine, indexation and other additional payments to pensions established by law, except for additional payments to allowances for certain categories of persons who have special merit to the Motherland) may not exceed ten subsistence minimums established for persons who have lost their ability to work”.

The provisions of Article 54 of Law No. 796-ХІI in the wording of Law No. 3285-ХІI, in effect at the time of the assignment of a pension to Vasyl Atamanchuk, and in the wording in effect at the time of consideration of this case, do not establish a limit to the maximum amount of the pension of persons to whom this article of Law No. 796-XII applies.

Paragraph 2 of Section II “Final and Transitional Provisions” of Law No. 3668-VI stipulates that the limitation of the pension by the maximum amount established by Law No. 3668-VI does not apply to pensioners who were assigned a pension before Law No. 3668-VI came into force (paragraph one); if as a result of the adoption of Law No. 3668-VI, the amount of the pension will be reduced, the pension will be paid in the previously established amount (paragraph four).

At the same time, in accordance with paragraph 2.2 of Section II “Final and Transitional Provisions” of Law No. 3668-VI, the payment of a pension to pensioners to whom it was assigned before the entry into force of Law No. 3668-VI and whose pension amount exceeds the maximum pension amount established by Law No. 3668-VI, are carried out without indexation, without applying the provisions of Articles 42.2 and 42.3 of the Law “On Compulsory State Pension Insurance” and other calculations determined by the law, as long as the amount of the pension corresponds to the maximum amount of the pension established by Law No. 3668-VI, which indicates the suspension of pension increases for persons affected by the Chornobyl disaster.

The introduced limitation of the maximum amount of pension (taking into account allowances, increases, additional pension, targeted monetary assistance, pensions for special services to Ukraine, indexation and other additional payments to pensions established by law, except for additional payments to allowances for certain categories of persons who have special merit to the Motherland) to persons affected by the Chornobyl disaster led to the violation of the essence of the constitutional guarantees regarding the provision of social protection of these persons, which is a violation of the state's obligations arising from the content of Articles 3, 16, 50 of Constitution of Ukraine in their relationship.

The provisions of Article 2 of Law No. 3668-VI, the first sentence of Article 67.3 of Law No. 796-XII, that limit the maximum amount of pension of persons affected by the Chornobyl disaster, do not correspond to Articles 1, 3, 16, 22.3, 50.1 of the Constitution of Ukraine.

Based on Articles 14.1.1, 54.1 of Law No. 796-XII, the Constitutional Court of Ukraine notes, that the state guaranteed pension to participants in the liquidation of the consequences of the accident at the Chornobyl NPP and to persons affected by the Chornobyl disaster, patients suffering from radiation sickness as a result of the Chornobyl disaster, assigned to category 1 of persons who were affected by the Chornobyl disaster, due to the deterioration of the health of these persons, in particular, disability caused by participation in work related to the liquidation of the consequences of the accident at the Chornobyl NPP. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Article 1.2 of the Convention on the Rights of Persons with Disabilities of 2006), persons affected by the Chornobyl disaster, who are classified as category 1, depend on social security guaranteed by the state for all or part of their lives.

Given the fact that the pension of Vasyl Atamanchuk was assigned in accordance with Article 54.1 of Law No. 796-XII in the wording that did not permit any limitation of the maximum amount of pension, and the provision of the first sentence of Article 67.3 of Law No. 796-XII in the wording in effect at the time of the pension assignment guaranteed annual pension increase without limiting its maximum amount, the subject of the right to a constitutional complaint had every reason to count on the stability of the legislation.

As a result of further actions of the legislator, this guarantee was cancelled: Vasyl Atamanchuk was deprived of the right to be granted a pension without limiting its maximum amount, which constituted interference with the right to property and caused the subject of the right to a constitutional complaint to feel the collapse of legitimate expectations.

Thus, the Constitutional Court of Ukraine declared provision of Article 2 of the Law of Ukraine “On Measures for Legislative Support of the Pension System Reform” No. 3668-VI dated July 8, 2011 as amended, extending its effect to the Law of Ukraine “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” No. 796-ХІI dated February 28, 1991, as amended, the provision of the first sentence of Article 67.3 of the Law “On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster” No. 796-ХІI dated February 28, 1991, as amended, as inconsistent with the Constitution of Ukraine (are unconstitutional), they cease to be effective from the date of delivering this Decision by the Constitutional Court of Ukraine.

*Supplementary information:*

Report on the Rule of law, endorsed by the European Commission for Democracy through Law (Venice Commission), CDL-AD(2011)003rev,

Special Study of the Venice Commission “Rule of Law Checklist”, CDL-AD(2016)007,

*Cross-references:*

Constitutional Court of Ukraine:

 - No. 5-r/2018, 22.05.2018,

 - No. 6-r/2018, 17.07.2018,

 - No. 1-r(ІІ)/2019, 25.04.2019,

 - No. 12-r/2020, 22.10.2020,

 - No. 1-r(ІІ)/2021, 07.04.2021,

European Court of Human Rights

 *- Kopecky v. Slovakia*, no. 44912/98, 28.09.2004;

 *- Saghinadze and Others v. Georgia*, no. 18768/05, 27.05.2010;

 - *Belane Nagy v. Hungary*, no. 53080/13, 13.12.2016;

 - *Kjartan Asmundsson v. Iceland*, no. 60669/00, 12.10.2004;

 - *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, 25.10.2011;

 - *Grudic v. Serbia,* no. 31925/08, 17.04.2012.