**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine dated October 12, 2022 No. 7-r(ІІ)/2022 in the case upon the constitutional complaints of Volodymyr Zhydenko and Viktor Petrenko regarding the compliance of the provisions of Article 2 of the Law “On Measures for Legislative Support of Pension System Reform” dated July 8, 2011 No. 3668-VI with the Constitution (constitutionality) (the case on social guarantees for defenders of Ukraine)**

The subjects of the right to constitutional complaint V. Zhydenko and V. Petrenko filed complaints with the Constitutional Court to declare the provisions of Article 2 of the Law “On Measures for Legislative Support of Pension System Reform” dated July 8, 2011 No. 3668-VI as amended (hereinafter referred to as “the Law No. 3668”) which established that “the maximum amount of pension (except for pension payments made from the Accumulated Pension Fund) < ... > (taking into account allowances, increases, extra pension, targeted cash assistance, pension for special services to Ukraine, indexation and other pension supplements established by legislation, except for supplements to certain categories of persons who have special services to the Motherland), assigned (listed) in accordance with < ... > laws of Ukraine < ... > “On Pension Provision of Persons Discharged from Military Service and Certain Other Persons”< ... > cannot exceed ten subsistence minimums, established for persons who have lost their ability to work” to be inconsistent with the Constitution (unconstitutional).

V. Zhydenko and V. Petrenko believe that the contested provisions of the Law No. 3668 contradict Articles 8.1, 8.2, 17.5, 22.3, 46.1, and 46.2 of the Constitution.

The Constitutional Court considers that the constitutional obligation of the state to grant a special legal status to citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, members of their families, as well as persons defending with arms the sovereignty, territorial integrity and inviolability of Ukraine during the aggression of the Russian Federation against Ukraine, which began in February 2014, with the provision of high-level social guarantees in accordance with this status, follows from the content of Articles 17.1, 17.2 and 17.5 of the Constitution in their conjunction with Articles 46.1 and 65.1 of the Basic Law.

The Constitutional Court emphasises that the obligation of the state to ensure social protection of citizens of Ukraine who are in service in the Armed Forces of Ukraine and in other military formations, established by Article 17.5 of the Basic Law, applies both to citizens of Ukraine who are directly in such service, and to those who are discharged from it.

The Constitutional Court points out that pension provision as the main component of high-level social guarantees for citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as persons defending with arms the sovereignty, territorial integrity and inviolability of Ukraine during the aggression of the Russian Federation against Ukraine, which began in February 2014, cannot be cancelled or limited.

The Constitutional Court noted that the limitation of the pension by establishing the maximum amount and termination of payment of the assigned pension to persons entitled to pension provision established by the Law “On Pension Provision of Persons Discharged from Military Service and Certain Other Persons” dated April 9, 1992 No. 2262-ХІ, violate the essence of the constitutional guarantees regarding the unconditional provision of social protection for the persons specified in Article 17.5 of the Constitution, who are obliged to protect the sovereignty, territorial integrity and inviolability of Ukraine.

The Constitutional Court takes into account that in view of the aggression of the Russian Federation against Ukraine, martial law has been introduced in Ukraine (Decree of the President of Ukraine “On the Imposition of Martial Law in Ukraine” dated February 24, 2022 No. 64/2022 as amended).

In view of the above, the Constitutional Court considers that it is necessary to postpone the loss of effect of the provisions of Article 2 of the Law No. 3668, which contradict the Constitution.

Thus, the Constitutional Court of Ukraine held to declare the provisions of Article 2 of the Law “On Measures for Legislative Support of Pension System Reform” dated July 8, 2011 No. 3668-VI as amended, extending their effect to the Law of Ukraine “On Pension Provision of Persons Discharged from Military Service and Certain Other Persons” dated April 9, 1992 No. 2262-ХІ, as such that do not comply with the Constitution (are unconstitutional) as they do not provide high-level social guarantees arising from the special legal status of citizens of Ukraine who serve in the Armed Forces of Ukraine and other military formations, as well as persons defending with arms the sovereignty, territorial integrity and inviolability of Ukraine during the aggression of the Russian Federation against Ukraine, which began in February 2014. The said provisions shall lose their effect six months after delivering this Decision by the Constitutional Court.

The Verkhovna Rada shall bring a normative regulation on the provision of high-level social guarantees arising from the special legal status of citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations, as well as persons defending with arms the sovereignty, territorial integrity and inviolability of Ukraine during the aggression of the Russian Federation against Ukraine, which began in February 2014, in accordance with the Constitution and this Decision.

**References:**

Decisions of the Constitutional Court:

- No. 5-rp/2002 dated March 20, 2002;

- No. 7-rp/2004 dated March 17, 2004;

- No. 7-rp/2016 dated December 20, 2016;

- No. 12-r/2018 dated December 18, 2018;

- No. 1-r(ІІ)/2019 dated April 25, 2019;

- No. 1-r(ІІ)/2022 dated April 6, 2022.