**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine
No. 9-r (ІІ)/2023 dated November 1, 2023 in the case upon the constitutional complaint of Nataliia Trihub regarding the conformity of an individual provision of Article 44.2.2 of the Law of Ukraine “On State Market Supervision and Control of Non-Food Products” (regarding the individualisation of legal liability for violation of consumer rights) with the Constitution of Ukraine (constitutionality)**

N.Trihub (hereinafter referred to as “the Applicant”) appealed to the Constitutional Court of Ukraine to consider the issue of compliance of Article 44.2.2 of the Law of Ukraine “On State Market Supervision and Control of Non-Food Products” dated December 2, 2010 No. 2735-VI as amended (hereinafter Law No. 2735) with the Constitution of Ukraine (constitutionality). The provision determines that administrative and economic sanctions in the form of a fine shall be imposed to a person who put products into circulation or, in accordance with Law No. 2735, is considered as having put products into circulation, in the case of “putting into circulation of products that do not meet the established requirements (except for the cases provided for in Article 28 and Article 29.3 of this Law), in the amount of three thousand non-taxable minimum incomes of citizens, and for the repeated commission of the same violation within a period of one to three years, for which a fine has already been imposed to the person - in the amount of six thousand tax-free minimum incomes of citizens”.

From the substantive analysis of the provisions of Articles 3, 42.1, 42.4, 50.2 of the Fundamental Law, the Constitutional Court of Ukraine concludes that effective and efficient protection of consumer rights is one of the ways for the state to fulfil its main constitutional duty – to respect and ensure human rights and freedoms.

The Constitutional Court of Ukraine believes that measures to prevent violations of the legislation on the quality and safety of goods, products, all types of work and services should be deterrent. The sanction that can be applied to a business entity as a measure of legal liability for violation of consumer rights, in particular regarding the quality and safety of goods, products, all types of work and services, must be effective and efficient in terms of stimulating business entities to meet the requirements of the legislation of Ukraine, which regulates the quality and safety of goods, products, all types of work and services.

The Constitutional Court of Ukraine concludes that the disputed provision of Law No. 2735, which increases the legal liability of business entities for violations of the legislation on the safety of non-food goods and products, has a legitimate purpose – to ensure a high level of consumer rights protection.

The contested provision of Law No. 2735 establishes an administrative and economic sanction in the form of a fine “in the amount of three thousand non-taxable minimum incomes of citizens” for committing a violation for the first time, which is defined as “putting into circulation products that do not meet the established requirements (except for the cases provided for in Articles 28 and 29.3 of this Law)”.

According to Article 44.2.2 of Law No. 2735, the subject of liability for violation of consumer rights is a person who “put products into circulation or, in accordance with this Law, is considered as having put products into circulation”.

According to paragraph 2 of Article 1.1 of Law No. 2735, “established requirements are requirements for non-food products <...> and their circulation on the market of Ukraine, established by technical regulations”.

The Constitutional Court of Ukraine notes that the establishment of absolutely defined and/or non-alternative sanctions in the law should be reasonably combined with the granting to the subject authorised by law of bringing a person to legal liability variability in choosing a sanction for the violator, which would make it possible to observe in this way the principles of proportionality and individualisation of legal liability. The principles of proportionality and individualisation of legal liability in the case of bringing a person to legal liability can be ensured, in particular, by establishing in the law different types of sanctions for committing the same offence or fines of different sizes that can be imposed on violators of the same protective norm.

Examining the disputed provision of Law No. 2735, the Constitutional Court of Ukraine states that there is only one sanction in it: a fine in the amount of three thousand non-taxable minimum incomes of citizens for the offence of “putting into circulation products that do not meet the established requirements”, committed for the first time.

Such a strict system of determining the sanction for the violator of the legislation on the safety of non-food goods and products does not provide the subject of imposing an administrative penalty with powers, the implementation of which would make it possible to individualise the legal liability of the violator and apply to him/her a proportionate measure of legal liability.

On the basis of the disputed provision of Law No. 2735, regardless of the circumstances that are significant for determining the degree of legal liability, the same sanction is applied – a fine in the amount of three thousand non-taxable minimum incomes of citizens.

The Constitutional Court of Ukraine considers that the disputed provision of Law No. 2735, which establishes an alternative sanction that has the characteristics of being absolutely determined, does not ensure proportionality and individualisation of the legal liability of the violator of the legislation on the safety of non-food goods and products, taking into account all the significant circumstances of the case.

Since the source of payment of the fine was the person's own funds, imposing a fine on him/her for violating the legislation on the safety of non-food goods and products is state interference with the constitutionally guaranteed right to property.

The disputed provision of Law No. 2735 does not define other types of sanctions and/or the possibility of changing the amount of the fine to take into account the circumstances significant for the procedure of bringing a person to legal liability by the subject of the imposition of an administrative sanction, in particular the property status of the offender, the value of goods of inadequate quality that were offered for sales

The contested provision of Law No. 2735 imposes an individual and excessive burden on a person, is the basis for excessive state intervention with the right to property guaranteed by Article 41 of the Constitution of Ukraine, and contradicts Articles 41.1, 41.4 of the Fundamental Law.

Thus, the Constitutional Court of Ukraine declared an individual provision of Article 44.2.2 of the Law “On State Market Supervision and Control of Non-Food Products” dated December 2, 2010 No. 2735-VI as amended, namely: “in the amount of three thousand non-taxable minimum incomes of citizens” as such that does not comply with the Constitution of Ukraine (is unconstitutional), shall lose effect six months after delivering this Decision by the Constitutional Court of Ukraine.

**References:**

First Protocol to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,

Guidelines for Consumer Protection, adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015,

Consolidated version of the Treaty on the Functioning of the European Union of 1 March 2020 (1201Е/TXT),

Regulation (EC) № 765/2008 of the European Parliament and of The Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) № 339/93

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products,

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety,

Technical regulations on the safety of toys, approved by the resolution of the Cabinet of Ministers of Ukraine No. 151 dated February 28, 2018 as amended, developed given the Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys,

 **judgments of the Court of Justice of the European Union in the cases:**

 - Italy v Council (Fishing quota for Mediterranean swordfish), C‑611/17, EU:C:2019:332 of 30 April 2019,

 - Denkavit Nederland, 15/83, EU:C:1984:183 of 17 May 1984,

 - Link Logistik N&N, C‑384/17, EU:C:2018:810 of 4 October 2018,

 - Brunswick Bowling Products v Commission (T‑152/19, EU:T:2021:539), of 8 September 2021,

**judgments of the European Court of Human Rights in the cases:**

 - OAO Neftyanaya Kompaniya Yukos v. Russia of 20 September 2011 (application No. 14902/04),

 - Vaskrsić v. Slovenia of 25 April 2017 (application No. 31371/12),

 - Imeri v. Croatia of 24 June 2021 (application No. 77668/14),

 - Beyeler v. Italy of 5 January 2000 (application No. 33202/96),

 - Alisic and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia of 16 July 2014 (application No. 60642/08),

 - Krayeva v. Ukraine of 13 January 2022 (application No. 72858/13),

 - Myakotin v. Ukraine of 17 December 2019 (application No. 29389/09),

 - Béláné Nagy v. Hungary, application No. 53080/13, § 115, 13 December 2016,

**decisions of Constitutional Court of Ukraine:**

 - No. 24-rp/2008 dated October 16, 2008,

 - No. 7-rp/2013 dated July 11, 2013,

 - No. 3-r(ІІ)/2021 dated July 21, 2021,

 - No. 4-r(II)/2022 dated June 15, 2022,

 - No. 8-r(I)/2022 dated October 12, 2022,

 - No. 9-r(ІІ)/2022 dated November 16, 2022,

 - No. 4-r(ІІ)/2023 dated April 19, 2023,

 - No. 5-r(II)/2023 dated July 5, 2023.