**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 10-r(II)/2024 dated November 13, 2024 in the case upon the constitutional complaint of the Primary Trade Union Organisation of the All-Ukrainian Trade Union Workers of Science, Production and Finance of PJSC “ArcelorMittal Kryvyi Rih” regarding the compliance of individual provisions of Article 7 of the Law of Ukraine “On the Procedure for Settlement of Collective Labour Disputes (Conflicts)” with the Constitution of Ukraine (on the right to judicial protection in the settlement of a collective labour dispute)**

Primary Trade Union Organisation of the All-Ukrainian Trade Union Workers of Science, Production and Finance of PJSC “ArcelorMittal Kryvyi Rih” (hereinafter, the “Applicant”) appealed to the Constitutional Court of Ukraine to verify the compliance of individual provisions of Article 7 of the Law of Ukraine “On the Procedure for Settlement of Collective Labour Disputes (Conflicts)” No. 137/98-VR dated March 3, 1998 (hereinafter, the “Law”) with the Constitution of Ukraine (constitutionality).

The Applicant believes that since individual provisions of Article 7 of the Law regulate only the extrajudicial procedure for settlement of a collective labour dispute (conflict), they do not comply with Articles 8.3, 55.2, 55.6, 64, 124.3 of the Constitution of Ukraine.

A primary trade union organisation is a party to a collective labour dispute (conflict) at the production level (Article 3.1.2 of the Law). As a party to a collective labour dispute, a primary trade union organisation shall have guarantees of freedom in selecting the method and form of protection of the rights of its members.

Article 7 of the Law regulates the sequence of deliberation and settlement of a collective labour dispute (conflict). In particular, deliberation of a collective labour dispute (conflict) shall be carried out on the issues provided for in paragraphs (a) and (b) of Article 2 of the Law, by a conciliation commission, and in case of failure to deliver a decision within the terms established by Article 9 of the Law, by labour arbitration; paragraphs (c) and (d) of Article 2 of the Law, by labour arbitration.

The provisions of the Law regulate the procedure for settlement of a collective labour dispute (conflict), which has the features of a mandatory pre-trial dispute settlement procedure, the possibility of determining which by law is established in Article 124.4 of the Constitution of Ukraine.

The provisions of Constitution of Ukraine guarantee the possibility of appealing to a court if a legal dispute has not been settled in a pre-trial procedure, the mandatory application of which is determined by law.

The state has a wide scope for considering how relations to protect the rights and interests of trade unions and their members can be regulated by law, in particular in the field of collective labour disputes (conflicts). However, the fact that individual provisions of Article 7 of the Law require mandatory pre-trial settlement of labour disputes (conflicts) by bodies other than courts, such as a conciliation commission and/or labour arbitration, does not, in the essence of Article 124.4 of the Constitution of Ukraine, prohibit recourse to court in cases where a labour dispute (conflict), which is a legal dispute, has not been settled in a pre-trial procedure.

In accordance with the provisions of Articles 124.1–124.4 of the Constitution of Ukraine, deliberation and settlement of a collective labour dispute (conflict), where the labour dispute (conflict) is a legal dispute, by a conciliation commission and/or labour arbitration are additional components of the mechanism for protecting the parties to a collective labour dispute (conflict), regardless of whether the resolution of such dispute by these bodies can provide an appropriate level of institutional and procedural guarantees for the parties to the collective labour dispute (conflict).

Applying in this case the constitutional conforming interpretation of individual provisions of Article 7 of the Law to verify their compliance with the Fundamental Law of Ukraine, the Constitutional Court of Ukraine states that these provisions establish a mandatory pre-trial procedure for dispute settlement and do not prohibit the right to apply to the court in case a collective labour dispute (conflict), which is a legal dispute, has not been settled in a pre-trial procedure, i.e. by a conciliation commission and/or labour arbitration.

The Constitutional Court of Ukraine declared the individual provisions of Article 7 of the Law of Ukraine “On the Procedure for Settlement of Collective Labour Disputes (Conflicts)” No. 137/98-VR dated March 3, 1998, that stipulate: “Deliberation of a collective labour dispute (conflict) shall be carried out on the issues provided for in paragraphs (a) and (b) of Article 2 of this Law by a conciliation commission, and in case of failure to deliver a decision within the terms established by Article 9 of this Law, by labour arbitration” as compliant with the Constitution of Ukraine.

**Supplementary information:**

* Universal Declaration of Human Rights of 1948;
* Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* Revised European Social Charter of 1996;
* International Labour Organisation Collective Bargaining Convention No. 154 of 1981;
* International Labour Organisation Examination of Grievances Recommendation No. 130 of 1967;
* International Labour Organisation Collective Bargaining Recommendation No. 163 of 1981.

**Cross-References:**

Constitutional Court of Ukraine:

* no. 9-zp/1997, 25.12.1997;
* no. 15-rp/2002, 09.07.2002;
* no. 1-v/2016, 20.01.2016;
* no. 5-r(II)/2021, 21.07.2021;
* no. 2-r(II)/2022, 06.04.2022;
* no. 1-r(II)/2024, 14.02.2024.

European Court of Human Rights:

* *Mutu and Pechstein v. Switzerland*, nos. 40575/10, 67474/10, 02.10.2018;
* *Sindicatul „Păstorul cel Bun“ v. Romania*, no. 2330/09, 09.07.2013;
* *Association of Civil Servants and Union for Collective Bargaining and Others v. Germany*, no. 815/18 and four others, 05.07.2022.