**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 3-r(ІІ)/2023 dated March 22, 2023 in the case upon the constitutional complaint of Ihor Lazurenko regarding the conformity of the provisions of Articles 70.2.4 and 70.2.5 of the Law of Ukraine “On Enforcement Proceedings”, Articles 50.2.3 and 50.2.4 of the Law of Ukraine “On General Compulsory State Pension Insurance” with the Constitution (constitutionality) (regarding guaranteed pension, which is the main source of living, not lower than the subsistence minimum)**

I. Lazurenko applied to the Constitutional Court to examine the compliance of the provisions of Articles 70.2.4 and 70.2.5 of the Law “On Enforcement Proceedings” dated June 2, 2016 No. 1404-VIII (hereinafter referred to as the “Law No. 1404”), provisions of Articles 50.2.3 and 50.2.4 of the Law “On General Compulsory State Pension Insurance” dated July 9, 2003 No. 1058-IV (hereinafter referred to as the “Law No. 1058”), “in the part that provides the opportunity to allow to foreclose on the debtor's pension even if it is the only source of income (main source of living) of the debtor and its amount is equal to the subsistence minimum established by law” with the Constitution (constitutionality).

According to Article 70.2 of the Law No. 1404, “no more than 50 percent of its amount can be deducted from the pension for the maintenance of family members (alimony), for compensation for losses from the theft of property of enterprises, institutions and organisations, for compensation by the pensioner for damage caused by mutilation or other injury to health, as well as in view of the death of the victim, for the return of overpaid wages in the cases provided for by law” (paragraph 4); “no more than 20 percent of the pension can be deducted for other types of charges” (paragraph 5).

In pursuance with Article 50.2 of the Law No. 1058, “no more than 50 percent of its amount can be deducted from a pension: for maintenance of family members (alimony), for compensation for losses from theft of property of enterprises and organisations, for compensation by a pensioner for damage caused by mutilation or other injury to health, as well as in view of the death of the victim, for the return of overpaid wages in the cases provided for by law” (paragraph 3); “no more than 20 percent of the pension can be deducted from all other types of charges” (paragraph 4).

In accordance with the provisions of Articles 1, 3, 8, 21, 28, 46, 48, and 92.1.6 of the Constitution in their interrelationship, the social state is responsible for protecting human dignity, ensuring a sufficient and dignified standard of living of a person, and for this purpose is obliged to create appropriate and effective national legal mechanisms for the implementation of the constitutional rights to social protection and a sufficient standard of living for him/her and his/her family, in particular, to guarantee in full at the legislative level the living wage as the minimum standard of basic social protection of a person from poverty, which is inviolable and belongs to components of the essential content of the specified constitutional rights in the social state, as it is aimed at satisfying the key needs of a person for a dignified and sufficient level of his/her life. Human dignity will be denied if the state does not provide a person with at least minimal social benefits.

Pursuant to the provisions of Article 46.3 of the Constitution in conjunction with the provisions of its Articles 1, 3, 8, 21, 28, 46, and 48, the legislator must define legal regulation so that pensions, other types of social benefits and assistance, which is the main source of living, ensure a standard of living not lower than the subsistence minimum established by law. Social benefits for certain categories of persons, as the main source of living, are basic forms of social protection, in particular for vulnerable people, from poverty, i.e. minimum social protection guaranteed at the constitutional level, which the state is obliged to provide unconditionally.

The provisions of Articles 1, 3, 21, 28, 46, and 48 of the Constitution of Ukraine in their interrelationship demonstrate the positive duty of the state to provide unconditional protection of human dignity and minimum social protection of a person, defined by the provisions of Article 46.3 of the Constitution. In particular, it implies regulation of the assignment and systematic payment during certain periods determined by law of pensions, other types of social benefits and assistance, which is the main source of living, in an amount not lower than the subsistence minimum established by law for the relevant category of persons. This means that as a result of such regulation, the amount of pensions, other social benefits and assistance paid to individuals, which is the main source of living, under no circumstances can be lower than the state-guaranteed subsistence minimum, even if the state justified deductions made from these payments to achieve a legitimate purpose.

The positive duties of the state are not limited only to the sphere of social protection; they are assigned to the state in various spheres.

Ensuring the implementation of the constitutional right to judicial protection and public order in the field of justice (this also applies to the execution of court decisions), the state can determine restrictions on the implementation of other human rights and freedoms, in particular, his/her rights in the field of social protection. However, the legislator is obliged to regulate these issues, applying reasonable measures to achieve a fair balance between the protection of public interests and the constitutional rights of a person to social protection and a sufficient standard of living for himself/herself and his/her family, without violating the essence of these rights.

The provisions of Articles 70.2.4 and 70.2.5 of the Law No. 1404, Articles 50.2.3 and 50.2.4 of the Law No. 1058, which are identical in their content, establish the maximum permissible amounts of deductions in percentage terms from the debtor's pension under enforcement proceedings, depending on the type of charges, which is a component of the mechanism of enforcement of court decisions.

From the analysis of the provisions of Articles 68.3, 69.1, and70.2 of the Law No. 1404, it stems that enterprises, institutions, organisations, natural persons, natural persons-entrepreneurs make deductions from the salary, pension, scholarship and other income of the debtor from the amount that remains after withholding taxes, fees and a single contribution to compulsory state social insurance, regardless of the amount of these incomes, until they are paid to the debtor. That is, the deduction can be made from all types of pensions without taking into account its amount and the actually paid amount of the pension after such deductions.

In accordance with the Law No. 1058, the following pension payments are assigned in the solidarity system: old-age pension, disability pension, survivor's pension (Article 9.1); the minimum age pension for men with 35 years of insurance experience, and for women with 30 years of insurance experience, is set at the amount of the subsistence minimum for persons who have lost work capacity, determined by law (Article 28.1.1).

In view of the above and the provisions of Article 33 of the Law No. 1058, it follows that a disability pension can be assigned in an amount equal to the subsistence minimum for persons who have lost their ability to work.

The current legislation defines the subsistence minimum as the value of a set of food products sufficient to ensure the normal functioning of the human body, to preserve its health, as well as a minimum set of non-food goods and a minimum set of services necessary to meet the basic social and cultural needs of an individual; as the basic state social standard established by law, on the basis of which state social guarantees and standards are determined in the spheres of population income, housing and communal services, household, social and cultural services, health care and education (Article 1.1 of the Law “On Subsistence Minimum”, Articles 1.4 and 6 of the Law “On State Social Standards and State Social Guarantees”).

The disputed provisions of the Laws Nos. 1404 and 1058, which set the maximum allowable amounts of deductions as a percentage from the debtor's pensions for collection in executive proceedings, which are defined in the minimum amount - the amount of the subsistence minimum for persons who have lost work capacity, determined by law, make it impossible payment of a pension, which is the main source of living, in an amount not lower than the subsistence minimum established by law. In this way, a person can be deprived of even minimal social benefits and protection from poverty due to the enforcement of the decision.

The Constitutional Court states that the provisions of Article 73 of the Law No. 1404 envisage a list of funds that cannot be levied at all, the Appendix to the Law No. 1404 defines a list of property that cannot be levied on executive documents; also in the provisions of Article 6.2 of the Law No. 1058, it is specified that if the totality of payments specified in Article 6.1 of the Law No. 1058, together with pension payments from the pension system and other incomes, do not reach the amount of subsistence minimum, defined by law for disabled citizens, citizens have the right to be granted state social assistance in the manner, amounts and at the expense of the funds specified by law.

However, the Laws Nos. 1404 and 1058 do not define effective prohibitions or safeguards regarding the enforcement of the debtor's pension in the event that its actually paid amount after such an appeal and permissible deductions becomes lower than the subsistence minimum established by law. Additional mechanisms aimed at the basic social support of a person are not appropriate in the sense of the provisions of Article 46.3 of the Constitution, as they do not ensure the payment of a pension, which is the main source of living, in the amount not lower than the subsistence minimum established by law.

The Constitutional Court concluded that the disputed provisions of the Laws Nos. 1404 and 1058 are a failure by the state to fulfil its positive duty to provide minimum social protection of a person in accordance with the provisions of Article 46.3 of the Constitution, which denies human dignity as an absolute value, nullifies the essence of constitutional rights to social protection and a sufficient standard of living for oneself and one's family, and therefore do not comply with the provisions of Articles 1, 3, 8, 21, 28, 46, and 48 of the Constitution.

Thus, the Constitutional Court of Ukraine declared the provisions of Articles 70.2.4 and 70.2.5 of the Law “On Enforcement Proceedings” dated June 2, 2016 No. 1404-VIII and Articles 50.2.3 and 50.2.4 of the Law “On General Compulsory State Pension Insurance” dated July 9, 2003 No. 1058-IV to be inconsistent with the Constitution of Ukraine (unconstitutional) in that they make it impossible to pay a pension - in the amount not lower than the subsistence minimum - which is the main source of living, allocated in the amount of subsistence minimum established by law.

The Verkhovna Rada shall regulate the procedure for deduction from a pension in the event of enforcement proceedings, established by the provisions of Articles 70.2.4 and 70.2.5 of the Law “On Enforcement Proceedings” dated June 2, 2016 No. 1404-VIII, Articles 50.2.3 and 50.2.4 of the Law “On General Compulsory State Pension Insurance” dated July 9, 2003 No. 1058-IV, taking into account the provisions of the Constitution and this Decision.

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