**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 6-r(II)/2022 of June 22, 2022 in the case upon the constitutional complaint of Joint Stock Company “The State Savings Bank of Ukraine” on conformity of the requirement of the first sentence of Article 1050.1 of the Civil Code of Ukraine**

Joint Stock Company “The State Savings Bank of Ukraine” (hereinafter referred to as the Bank) requested the Constitutional Court of Ukraine to review the constitutionality of the provision of the first sentence of Article 1050.1 of the Civil Code of Ukraine (hereinafter referred to as the Code), under which “in case the borrower fails to repay the credit amount in a timely manner, he/she is obliged to pay the amount of money in accordance with Article 625 of this Code”.

The Constitutional Court observes that in terms of property relations, the main duty of the state is to ensure the protection of the rights of all subjects of ownership. One of the mechanisms for ensuring such a protection is a legislative arrangement, within which, particularly, the grounds for the emergence and cease of property rights, cases of lawful restriction of property rights, the grounds and procedure for exercising such a restriction are clearly and exhaustively established. The Constitutional Court of Ukraine noted that the prescribed provision of Article 41 of the Constitution of Ukraine defines the triad of the owner’s powers: possession, use, disposal, which he/she exercises in relation to certain property, belonging to him/her on one or another legal basis, therefore, in the understanding of this provision, the property, which everyone has the right to own, use and dispose, relates to property. Accordingly, the constitutional imperative on the inviolability of the right of private property is primarily aimed at protecting the owner from an unlawful interference in the exercise of his/her rights to own, use and dispose the property belonging to him/her freely and at his/her own discretion.

During the credit period specified in the Credit Agreement, as well as during 2015-2017, when the Bank within judicial proceedings collected from the Borrower and the Guarantor the debt under the Credit Agreement, in particular interest for the use of the credit, accrued after the date of its repayment, there was stable case law on the permissibility of collecting interest for the credit usage, accrued for the overdue period, that is after the date of the credit repayment until the day of its actual return.

Ensuring stability and unity of a case law is a fundamental function of the Supreme Court (Article 36.1 of the Law “On the Judiciary and the Status of Judges”), which can be performed by another state authority, in particular the Constitutional Court.

Guided by the principle of *pacta sunt servanda* (agreements must be kept), taking into account the provisions of Article 190.1, Article 1048.1.2 of the Code, the established case law of national courts on the legality of collecting interest for the credit usage, accrued for an overdue period (which remained stable during 2011-2017), the Constitutional Court of Ukraine concluded that as at the time of the credit agreement, and during certain credit period, the Bank had legitimate expectations to receive interest for the use of funds before the date of credit repayment, and therefore the right of the Bank to pay such interest is deemed to be a property and, accordingly, is the item subject to ownership, protection of which is guaranteed by Article 41 of the Constitution.

The provisions of Article 1050 of the Code stipulate the consequences of a breach of the agreement terms by the borrower. Particularly, the impugned provision of Article 1050 of the Code determines that in case the borrower fails to repay the credit amount in a timely manner, he/she is obliged to pay the amount of money in accordance with Article 625 of this Code.

The Constitutional Court stresses that this norm is a reference one, therefore its interpretation and application immanently require the application of the norm of the Code, to which there is a direct reference in the first sentence of Article 1050.1 of the Code.

The analysis of the scope of application of the provisions of Articles 625 and 1050 of the Code demonstrates that they regulate the issues of liability for violation of a monetary obligation by the borrower, while the provisions of Article 1048 of the Code determine the general conditions for accrual, payment interest for the use of funds as essential terms of the loan agreement, credit agreement.

The interest referred to in the provisions of Article 1048 of the Code is an integral element of the payment for the granted loan/credit, which, along with the principal amount of the loan/credit, constitutes the total amount of the debt, which the debtor must pay after a certain time after receiving the loan/credit.

The Constitutional Court of Ukraine noted that the provisions of Article 625.5, the first sentence of Article 1050.1 of the Code and Article 1048.1 of the Code regulate legal relations that are different in their content and are not mutually exclusive, because, as a general rule (Article 622.1 of the Code), unless otherwise provided by the agreement or the law, the application of civil liability measures does not relieve the debtor from the performance of obligations under the agreement in kind.

The Constitutional Court considers that the application of the provision of the first sentence of Article 1050.1 of the Code, as such, aimed at granting a creditor the right to receive three percent per annum of the overdue amount and inflationary losses as measures of civil liability for improper performance of monetary obligations by the borrower, and, thus, cannot affect the right of the creditor to receive interest as payment for the use of the credit, that is, the right to demand from the debtor the fulfillment of obligations under the credit agreement in kind.

The Constitutional Court came to the conclusion that, in terms of the issues raised in the constitutional complaint, the impugned provision of Article 1050 of the Code does not restrict the Bank’s right to receive interest in the form of payment for the use of the credit. Consequently, the provision of the first sentence of Article 1050.1 of the Code does not entail negative consequences for the Bank’s right to conduct business activities.

Thus, the Constitutional Court held to declare the provision of the first sentence of Article 1050.1 of the Civil Code to be constitutional.

*References:*

Decisions of the Constitutional Court of Ukraine:

No. 14-rp/2000 of December 13, 2000,

No. 3-rp/2002 of February 12, 2002,

No. 16-rp/2004 of November 11, 2004,

No. 5-rp/2007 of June 20, 2007,

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

No. 14-rp/2011 of November 9, 2011,

No. 3-r/2019 of June 5, 2019,

Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950,

Judgments of the European Court of Human Rights:

 “Jatridis v. Greece” of May 25, 1999 (application No. 31107/96),

“Beyeler v. ltaly” of January 5, 2000 (application No. 33202/96),

“Broniowski v. Poland” of June 22, 2004 (application No. 31443/96),

“Depalle v. France” of May 29, 2010 (application No. 34044/02),

“Centro Europa 7 S.R.L. and di Stefano v. ltaly” of June 7, 2012 (application No. 38433/09),

“Kopecky v. Slovakia” of September 28, 2004 (application No. 44912/98),

“Saghinadze and Others v. Georgia” of May 27, 2000 (application No. 18768/05),

“Belane Nagy v. Hungary” of December 13, 2016 (application No. 53080/13),

“Burdov v. Russia” of September 4, 2002 (application No. 59498/00),

“De Luca v. Italy” of September 24, 2013 (application No. 43870/04),

“Anheuser-Busch Іпс. v. Portugal” of January 11, 2007 (application No. 73049/01),