

The decision of the Constitutional Court once more raised a question of the social welfare reform

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- On July 11, 2007, the Constitutional Court of Ukraine published its decision on the unconstitutionality of several provisions of the State Budget Law for 2007. This concerns the articles that (a) terminated privileges, compensations and guarantees to public sector employees and military servants related to discounted prices for housing, phone calls, utility services, etc., and (b) reduced one-time annual assistance payments defined in laws "On the Status of war Veterans and Guarantees of Their Social Protection" and "On Victims of Nazi Pursuit". Besides, the Court defined as unconstitutional (a) the provisions on restriction of rights for pension payments before reaching retirement age for certain groups of population and (b) the determination of the amount of assistance payments for child-care before their third birthday on the basis of household's income. This decision of the Constitutional Court renewed numerous privileges, which were suspended for 2007 by the Law on the State Budget.

Generally, this decision of the Constitutional Court is not an innovation. Similar decisions were approved in previous years as well (in particular, in 1999, 2002, 2004 and 2005). The basis for such Court's decisions has been the notion that the termination of privileges and reduction of their size is a limitation of rights and freedoms of Ukrainian citizens. Such an interpretation of the term 'privilege' may become an obstacle for future social welfare system reforms.

Also explaining the decision the judges appealed to the Article 46 of the Constitution: "Pensions and other social assistance payments, which are the major source of incomes, should ensure the living standards not lower than subsistence minimum defined in the law".

For the budget process it is important that the Constitutional Court defined as unconstitutional amending other Ukrainian legislation by the State Budget Law. According to the Court's decision, the State Budget Law cannot terminate the provisions of other laws or change the legal regulation of social relations defined in other laws. This makes budget process of 2008 even more difficult as the practice of 'correcting' the legislation upon the available central fiscal resources has been used for many years.

According to the government estimations, the fulfillment of the Constitutional Court's decision would require the financing at UAH 70 bn (44.5% of the central fiscal revenues in 2007). Therefore, at the moment the fulfillment of Court's decision is not possible.

This once more has raised a question on the necessity to reform the current social welfare system that is over-burdened by various privileges. Instead, it is necessary to introduce targeted means-tested social welfare system. For this the Government should approve meaningful poverty threshold, as now more than 50% of households would be treated as social assistance eligible by the subsistence minimum criteria distorting the idea of social assistance.