

By the Judgement of 19 March 2024 No.11-II, the Constitutional Court assessed constitutionality of Article 5 (items 1 and 2) and Article 137 (item 3) of the Federal Law «On insolvency (Bankruptcy)»

These interrelated legal provisions were considered to the extent that they serve as a basis for the arbitration court to resolve issues related to the priority of reimbursement of court costs, at the expense of the debtor, to a person in whose favour a separate dispute with the debtor in a legal entity bankruptcy case was resolved.

These provisions were found to be inconsistent with the Constitution to the extent that they provide, as a general rule (regardless of the subject matter of the separate dispute and peculiarities of the legal position in bankruptcy proceedings) that claims for reimbursement of court costs, at the expense of the debtor in separate cases, to the defendants whose claims have been settled in their favour should be satisfied as part of the claims of third priority creditors after repayment of the principal amount of the debt.

The Constitutional Court has established the procedure for the enforcement of this Judgement.

Until the appropriate changes are made:

court costs of the defendants in a lawsuit filed in the framework of bankruptcy case of a legal entity for the annulment of a contract of the debtor, the satisfaction of which has been refused, if such defendants are not controlling persons of the debtor and such costs are imposed on the debtor, are related to current payments and are subject to reimbursement within the framework of the fifth priority of current payments according to the Bankruptcy Law;

such a decision on the priority of the reimbursement of court costs shall not be excluded even if the court is considering issues relating to the reimbursement to a controlling person of the debtor of court costs incurred by it in the course of the consideration of a claims, to establish its legal liability or a claim annulment of a contract between debtor and controlling person, which have been rejected, provided that the application of such priority of the satisfaction of claims for such costs is justified by specific factual circumstances: the amount and circumstances of the expenses claimed for reimbursement; the presence or absence of independent creditors in the bankruptcy case, etc., and does not entail violation of the balance of rights and legitimate interests of all persons involved in the bankruptcy case; the decision on the priority of the reimbursement of court costs should in any case be taken when reimbursing court costs to a person whose claim

for civil liability as a controlling debtor was rejected because the court found that this person lacked the relevant characteristics.

Judicial acts, which based on the contested legal provisions (in respect of applicant), shall be subject to review in accordance with the established procedure, taking into account the procedure for the enforcement of this Judgement as determined by the Constitutional Court.