**Summary to the Decision of the Second Senate of the Constitutional Court No. 11-r (ІІ)/2023 dated December 20, 2023 in the case upon the constitutional complaint of Anatolii Luzhynetskyi regarding the conformity of individual provisions of Article 111.1 of the Criminal Executive Code with the Constitution (constitutionality) (regarding the private and family life of a person, sentenced to life imprisonment)**

A. Luzhynetskyi, who was sentenced to life imprisonment and is serving his sentence, appealed to the Constitutional Court to declare individual provisions of Article 111.1 of the Criminal Executive Code (hereinafter, “the Code”) as inconsistent with the Constitution (unconstitutional), according to which convicts held in penal colonies of the minimum security level with easier conditions of detention, social rehabilitation units of penal colonies of the minimum security level with general conditions of detention and social rehabilitation units of penal colonies of medium security level and educational colonies are allowed short-term trips outside the territory of the colony of Ukraine for a period of no more than seven days, without taking into account the time required for travel in both directions (no more than three days), in connection with exceptional private circumstances, in particular such as “the death or serious illness of a close relative, which threatens the life of the patient”.

The Constitutional Court is guided by the provisions of Articles 3, 21, 24, 28 of the Constitution and proceeds from the fact that every human being is of the highest value and deserves a humane and dignified treatment to himself as an individual, and the state is obliged to guarantee such treatment equally to everyone and be responsible for the protection of human dignity, affirmation of the inalienability and inviolability of his constitutional rights and freedoms. These fundamental principles are the defining components of the Ukrainian constitutional system and must be taken into account by the state in its activities.

The Constitutional Court emphasises that human dignity is an absolute value that belongs to every human being, even if he has been convicted of particularly grave crimes; no one can limit or deny the dignity of a human being under any circumstances, as well as the equality of all people in their dignity and the indivisibility of their fundamental rights.

The legislator, who determines the organisation and activity of bodies and institutions for the execution of punishments, as well as actions that are crimes and liability for them (Articles 92.1.14 and 92.1.22 of the Constitution), must regulate the mechanisms of execution and serving of criminal punishments, ensuring equal protection of the dignity of each person as an individual, affirming the inalienability and inviolability of his constitutional rights and freedoms and preserving their essence, while observing the principle of humanism as an important basis for the progressive formation and implementation of the policy of execution and serving of criminal punishments.

The mechanism of execution and serving of criminal punishments for all persons sentenced to imprisonment, regardless of the gravity of the crimes committed by them, cannot lead to the destruction of a human being as an individual, humiliation and devaluation of his moral, psychological, spiritual qualities and needs, abolition of the right of everyone to humane treatment to himself, as well as to level the essential content of constitutional human rights and freedoms.

Human dignity should be interpreted not only as a right guaranteed by Article 28 of the Constitution, but also as a fundamental constitutional value that fills human existence with meaning, is the foundation for all constitutional rights, a measure for determining their essence, and a dominant criterion for the legality of possible restrictions on rights.

Human dignity is the source and criterion for determining the essence of the constitutional right to non-interference with private and family life, guaranteed by the provisions of Article 32 of the Constitution, which is naturally connected with respect for human dignity.

The constitutional right to non-interference with private and family life in connection with human dignity provides an opportunity for every person, even sentenced to deprivation of liberty, to manifest himself as a person with moral, spiritual, psychological qualities and needs, primarily in the aspect of revealing his own responsibility in caring for his close relatives, in particular, fulfilling the duty to take care of their disabled parents if they need care due to a serious illness, as well as to attend their funeral in case of death.

The state must ensure the establishment of an appropriate mechanism for the realisation of the opportunity for everyone to visit their seriously ill close relative or attend their funeral, recognising it for all persons sentenced to imprisonment, even for those of them who have committed particularly grave crimes and are sentenced to life imprisonment.

The requirements for the legality of limiting constitutional rights and freedoms, guaranteeing their equality and prohibiting discrimination, as well as the essential content of such rights and freedoms, apply to every person sentenced to imprisonment, regardless of the gravity of the crime committed by him.

Denying a person sentenced to imprisonment the opportunity to visit a seriously ill close relative or attend his funeral, based only on the gravity of the crime committed by him, is an unreasonable restriction of the constitutional right to inviolability of private and family life, which is also an attack on human dignity, the equality of a person in dignity with other people and the indivisibility of her fundamental rights.

Recognition by the state for all persons sentenced to imprisonment, regardless of the gravity of the crimes committed by them, of the potential opportunity to visit their seriously ill close relative or to be present at his funeral will not only contribute to the protection of the human dignity of such convicts, to the protection of their constitutional rights to the free development of their personality and to inviolability of private life, but will also be a manifestation of the state's fulfilment of its positive duty regarding social rehabilitation, an indicator of the affirmation of humanity and civility of society in general.

The establishment by the criminal executive legislation, primarily the Code, of the procedure and conditions for the execution and serving of criminal punishments must also guarantee respect for the human dignity of all convicted persons, the inviolability of the essence of their rights and freedoms, correction and resocialisation of such persons, and public safety and protection of public order in the aspect preventing convicts from committing new criminal offenses and ensuring the inevitability of execution and serving of punishments.

The contested provisions of the Code make it impossible for persons sentenced to life imprisonment to leave the colony on the territory of Ukraine for a short time in connection with such an exceptional private circumstance as the death or serious illness of a close relative that threatens the patient's life, and this is a limitation of the constitutional right to inviolability of the private and family life; they make it possible to limit the constitutional right to inviolability of the private and family life of persons sentenced to life imprisonment, which nullifies the essential content of this right, encroaching on human dignity, on the equality of such persons in their dignity and inseparability of their fundamental rights.

Covered by the constitutional right to the inviolability of private and family life, the possibility of short-term trips outside the colony on the territory of Ukraine of persons sentenced to life imprisonment in connection with such an exceptional private circumstance as the death or serious illness of a close relative, which threatens the life of the patient, is not unconditional and its limitations can be considered as a necessary means to prevent violations of public safety and public order.

The state's positive obligation regarding social rehabilitation consists in recognising for persons sentenced to life imprisonment the potential possibility of a short-term departure outside the colony in connection with the death or serious illness of a close relative, which threatens the patient's life. This duty is correlated, in particular, with the right of such convicts to correction and social rehabilitation, which is determined by the purpose of any criminal punishment.

However, the contested provisions of the Code do not provide persons sentenced to life imprisonment with even the potential possibility of short-term travel outside the colony on the territory of Ukraine in connection with such an exceptional private circumstance as the death or serious illness of a close relative, which threatens the patient's life.

The Constitutional Court emphasises that in order to ensure the provisions of Articles 3, 8, 21, 23, 24, 28, 32 of the Constitution, the potential possibility of a short-term departure outside the colony on the territory of Ukraine in connection with such an exceptional circumstance as the death or serious illness of a close relative, that threatens the patient's life, must be regulated by the legislator for all persons sentenced to imprisonment, including those sentenced to life imprisonment.

The Constitutional Court proceeds from the fact that this is conditioned by a legislative omission in the regulation of this segment of public legal relations in the Code.

The legislative omission identified in the disputed provisions of the Code indicates the failure of the state to fulfil its positive obligation to regulate in law a certain segment of relations in the criminal executive area regarding short-term trips outside the colony on the territory of Ukraine of persons sentenced to life imprisonment in connection with such an exceptional private circumstance, such as the death or serious illness of a close relative, which threatens the patient's life, and this violates the constitutional principle of equality, the right to respect for human dignity, the free development of one's personality, the inviolability of private and family life, and indicates the failure of the state to perform its positive obligation regarding the social rehabilitation of such persons.

The Constitutional Court declared individual provisions of Article 111.1 of the Criminal Executive Code in that they make it impossible to apply to persons sentenced to life imprisonment short-term trips outside the colony on the territory of Ukraine in connection with such an exceptional private circumstance as the death or serious illness of a close relative, which threatens life of the patient, as inconsistent with the Constitution (are unconstitutional); they lose their effect after three months from the date of delivering this Decision.

The Verkhovna Rada within three months shall bring the normative regulation established by individual provisions of Article 111.1 of the Criminal Executive Code into compliance with the Constitution and this Decision.

**References:**

Decisions of the Constitutional Court of Ukraine:

- no. 8-rp/2007 dated October 16, 2007;

 - no. 2-rp/2012 dated January 20, 2012;

 - no. 2-rp/2016 dated June 1, 2016;

 - no. 5-r/2018 dated May 22, 2018;

 - no. 6-r(ІІ)/2021 dated September 16, 2021;

 - no. 5-r(II)/2022 dated June 22, 2022;

 - no. 3-r/2022 dated December 23, 2022;

 - no. 1-r/2023 dated February 7, 2023;

 - no. 3-r(II)/2023 dated March 22, 2023;

 - no. 4-r(II)/2023 dated April 19, 2023;

The Universal Declaration of Human Rights of 1948, adopted by the General Assembly of the United Nations on December 10, 1948,

International Covenant on Civil and Political Rights of 1966,

General Comment No. 21 to the International Covenant on Civil and Political Rights: Article 10 (humane treatment of persons deprived of their liberty), April 10, 1992,

Recommendation Rec(2006)2-rev (as amended) of the Committee of Ministers of the Council of Europe to member states on the European Penitentiary Rules, adopted on January 11, 2006,

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),

Guiding Principles of the Nelson Mandela Rules Application (2018), produced by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Penal Reform International (PRI),

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted on December 9, 1988 by the Assembly General,

2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(92)3,

11th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(2001)16,

Memorandum of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT (2007) 55, 27 June 2007,

25th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(2016)10,

Recommendation No. R (82) 16 of the Committee of Ministers to Member States on Prison Leave, adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies

Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners, adopted on October 9, 2003,

Judgment of the Federal Constitutional Court of Germany dated November 8, 2006, no. 2BvR 578/02,

Order of the Federal Constitutional Court of Germany dated May 23, 2013, no.  2BvR 2129/11,

Judgment of the Constitutional Court of the Republic of Latvia dated September 18, 2020 no. 2019-32-01,

Decision of the European Court of Human Rights on admissibility in the case of Sannino v. Italy dated May 3, 2005, application no. 72639/01,

Judgments of the European Court of Human Rights:

 - Boulois v. Luxembourg dated April 3, 2012, no.37575/04,

 - Lavents v. Latvia dated November 28, 2002, no. 58442/00,

 - Płoski v. Poland dated November 12, 2002, no. 26761/95,

 - Lind v. Russia dated December 6, 2007, no. 25664/05,

 - Ēcis v. Latvia dated January 10, 2019, no. 12879/09,

 - Feldman v. Ukraine (no. 2) dated January 12, 2012, no. 42921/09,

 - Kanalas c. Roumanie dated December 6, 2016, no. 20323/14.