

**Summary to the Decision of the Grand Chamber of the Constitutional Court of Ukraine No. 7-r/2020 dated June 11, 2020 in the case upon the constitutional petition of 55 People's Deputies on the conformity of Article 375 of the Criminal Code with the Constitution of Ukraine (constitutionality)**

The subject of the right to constitutional petition - 55 People's Deputies of Ukraine - appealed to the Constitutional Court of Ukraine to declare unconstitutional Article 375 of the Criminal Code of Ukraine (hereinafter - the Code). Article 375 of the Code establishes criminal liability for a judge (judges) ruling on a "knowingly unjust" sentence, decision, ruling or resolution.

In Ukraine, as a democratic state, the main requirement for legislation is its compliance with the criteria and principles established in the Constitution of Ukraine, in particular with the principles of the rule of law.

The requirement of the rule of law is the observance of the principle of legal certainty, which determines the identical application of a legal norm, the prevention of opportunities for its arbitrary interpretation.

Legal certainty of a legal norm is a key condition for ensuring effective judicial protection for everyone by an independent court.

The wording of the provision of Article 375 of the Code allows for a possibility of its abuse in the conduct of actions by pre-trial investigation bodies that result in criminal prosecution of a judge only for the fact that he/she issued a court decision, which, according to the subjective understanding of the investigator, prosecutor or any other person is "unjust" (in particular, in case of disagreement with this decision).

The criminal law (Article 375 of the Code) must meet the requirements of legal certainty, clarity, consistency and predictability. This is a guarantee that a judge will administer justice on the basis of the rule of law and the effective exercise by everyone of the constitutional right to judicial protection.

The Constitutional Court of Ukraine considers that any criminal charge against a judge should be based on the provisions of criminal law that are sufficiently clear, understandable, consistent and predictable, provided that guarantees are established that ensure the independence of the judge in the administration of justice.

The final court decision may not be reviewed, except in cases established by procedural laws for its review by the relevant court, which excludes the possibility of assessing such a decision by the investigator, prosecutor when performing actions that result in bringing a judge to criminal liability.

The establishment of criminal liability for the issuance of a "knowingly unjust" court decision creates risks and opportunities to influence judges due to the vagueness and inconsistency of the disposition of Article 375 of the Code.

The Constitutional Court of Ukraine considers that based on the principle of independence of judges guaranteed by the Constitution of Ukraine, the disputed provisions of the Code, which define acts that are crimes the subject of copmission of which is a judge, should be formulated by the legislator in such a way so that a state body, any official are not able to use them as a means of influencing a judge and interfering with the administration of justice.

The constitutional provisions on the independence of judges are outweighed due to the legal uncertainty of Article 375 of the Code.

The Verkhovna Rada of Ukraine shall bring the normative regulation established by Article 375 of the Code, which is declared unconstitutional, into compliance with the Constitution of Ukraine, as well as with this Decision.

Thus, the Constitutional Court of Ukraine held to declare Article 375 of the Criminal Code of Ukraine inconsistent with the Constitution of Ukraine (unconstitutional). It shall cease to be valid six months after the adoption of this Decision by the Constitutional Court of Ukraine.

References:

Decisions of the Constitutional Court of Ukraine:

No. 5-rp/2016 dated July 8, 2016

No. 11-r/2018 dated December 4, 2018

No. 1-r/2019 dated February 26, 2019

No. 6-r/2019 dated June 20, 2019

Judgment of the European Court of Human Rights in the case "Novik v. Ukraine" of 18 December 2008 (application no. 48068/06)

The Recommendation of the Committee of Ministers of the Council of Europe to Member States on Judges: Independence, Efficiency and Responsibilities of 17 November 2010 № CM / Rec (2010) 12

Report of the European Commission for Democracy through Law (Venice Commission) on the Independence of the Judiciary, approved at its 82<sup>nd</sup> plenary session on 12-13 March 2010.