**Summary to the Decision of the Grand Chamber of the Constitutional Court of Ukraine No. 1-r/2024 dated October 29, 2024 in the case upon the constitutional petition of the Supreme Court regarding the compliance of Article 75.4 of the Family Code of Ukraine with the Constitution of Ukraine**

The subject of the right to a constitutional petition – Supreme Court – appealed to the Constitutional Court of Ukraine to verify the compliance of Article 75.4 of the Family Code of Ukraine (hereinafter, the “Code”) in accordance to which “one of the spouses is in need of financial assistance, if his/her salary, pension, income from the use of his/her property, other income do not provide him/her with the subsistence minimum established by law” with the Constitution of Ukraine (constitutionality).

The national legislation defines the legal nature of marriage, the key features of which are its registration with the voluntary consent of a man and a woman, equality of legal status of each spouse, as well as the procedure for its conclusion and dissolution, and the rights and obligations of spouses, including the maintenance of each other.

From the analysis of the provisions of Article 75 of the Code regarding the payment of maintenance (alimony) by one spouse in favour of the other in their essential connection with the provisions of the Constitution of Ukraine and the Code, it appears that such payment depends on the need for material assistance, but is not a social payment, state aid and is not a component of the right to social protection. Legal relations on spousal maintenance stem from the constitutional principle of equality of rights and obligations of each spouse in marriage and family, the requirement for the state to protect the family (as the basis of society) and are provided for in Articles 51.1, 51.3 of the Constitution of Ukraine.

The Constitutional Court of Ukraine emphasised that the rights and obligations of one of the spouses to support the other spouse are not only moral, but also social in its essence.

The normative regulation allowing for a situation where a person’s total income (including social payments and benefits) is lower than the subsistence minimum established by law contradicts Article 46.3 of the Constitution of Ukraine.

The legal regulation of the relations of material maintenance of one of the spouses must comply with the provisions of the Fundamental Law. At the same time, measures to establish the obligation of one of the spouses (given that such maintenance is not financed by the state at the expense of the state budget or local budgets) shall not be excessive and allow the state to unreasonably interfere in the private (personal) and family life of the spouses.

The subsistence minimum in the context of Article 75.4 of the Code is defined in a way that does not fully take into account and cannot take into account the needs of disabled persons, and therefore cannot be universal for determining the level of costs for maintaining the life support of all people without exception.

The subsistence minimum does not reflect the actual state of a person’s need for material assistance, but rather, as may be seen from the content of Article 75.4 of the Code, limits the right to the spousal maintenance (alimony). In addition, since a person of retirement age or a person with a disability of groups I, II or III has a pension or social benefits in an amount that may exceed the subsistence minimum established by law, Article 75.4 of the Code shall not be applied, and the right to spousal maintenance shall not be exercised.

The state’s granting of social benefits cannot affect the granting of spousal maintenance or exclude the possibility of such granting.

The family is protected by the state, however the protection shall not involve excessive regulation of the private sphere, interference in family relations by limiting the right to maintenance (alimony) of a disabled spouse to the subsistence minimum, which is a basic social standard. Such a restriction negates the very essence of this right and, according to the Constitutional Court of Ukraine, contains signs of excessive state regulation of family life. The provisions of Article 75.4 of the Code regarding the determination of the level of poverty of a person for obtaining the right to maintenance, together with the possibility of obtaining a total income at the level of the subsistence minimum, eliminate the very possibility of obtaining the right to maintenance by the person concerned, which can be considered as interference with the private (personal) and family life of this person, which contradicts the purpose of the provisions of Article 75 of the Code, which establish the right of one of the spouses to maintenance.

The Constitutional Court of Ukraine believes that Article 75.4 of the Code is formulated in such a manner that it does not allow the court to determine fair, appropriate criteria for the need for financial assistance based on the financial situation of the spouse in need, the level of his/her income and expenses, as well as the possibility of receiving income from other sources, and therefore does not comply with the principle of legal certainty and unambiguity of a legal norm, since it cannot ensure its uniform application, which contradicts Article 8 of the Fundamental Law of Ukraine.

The imposition of a legislative restriction on the provision of material assistance (alimony) is unfair in its essence and unjustified given that the legislator has the opportunity to choose a means to achieve this goal that would be less burdensome to the realisation of private (personal) and family life without unreasonable interference in these areas.

The Constitutional Court of Ukraine considers it unjustified to legislatively restrict the size of the subsistence minimum to the limit, in case of not reaching which a person is considered to be in need of financial assistance from the other spouse, since such a limitation cannot be considered objectively assessed, determined by the individual needs of one of the spouses who needs financial assistance , is an excessive interference (regulation) of the state in the right to receive material assistance and to provide it in a larger amount, as it consists in limiting the realisation of such a right (narrows its implementation to the circle of persons in need of material assistance).

The Constitutional Court of Ukraine believes that the state, in exercising its constitutional duty to promote social rights, must not only establish a social protection system, but also ensure its proper functioning. This system must guarantee the protection of, inter alia, the family, childhood, maternity and paternity.

By transferring the conditions and other criteria from public law to private law in Article 75 of the Code, the legislator did not provide effective mechanisms for a spouse in need to receive financial assistance from the other spouse to ensure an adequate standard of living, which indicates that Article 75.4 of the Code is inconsistent with Articles 8, 46, 48 of the Constitution of Ukraine.

Article 75.4 of the Family Code of Ukraine is declared inconsistent with the Constitution of Ukraine (is unconstitutional) and shall cease to be effective from the date of this Decision delivery by the Constitutional Court of Ukraine.

**Supplementary information:**

* Universal Declaration of Human Rights of 1948;
* Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* International Covenant on Economic, Social and Cultural Rights of 1966;
* Convention on the Elimination of All Forms of Discrimination against Women of 1979;
* Convention on the Rights of the Child of 1989;
* Charter of Fundamental Rights of the European Union of 2000;
* Principles of European Family Law of 2004 drafted by the Commission on European Family Law;
* Report of the European Commission for Democracy through Law (Venice Commission), adopted at its 86th plenary session on March 25–26, 2011 [CDL-AD(2011)003rev] and at its 106th plenary session on March 11–12, 2016 [CDL-AD(2016)007].

**Cross-References:**

Constitutional Court of Ukraine:

* no. 15-rp/2004, 02.11.2004;
* no. 5-rp/2005, 22.09.2005;
* no. 2-rp/2012, 20.01.2012;
* no. 2-rp/2016, 01.06.2016;
* no. 5-r/2018, 22.05.2018;
* no. 6-r/2019, 20.06.2019;
* no. 6-r(ІІ)/2021, 16.09.2021;
* no. 3-r(ІІ)/2023, 22.03.2023;
* no. 11-r(ІІ)/2023, 20.12.2023.

European Court of Human Rights:

* *Shchokin v. Ukraine*, nos. 23759/03, 37943/06, 14.10.2010;
* *Корр v. Switzerland*, no. 23224/94, 25.03.1998.