**Summary to the Decision of the First Senate of the Constitutional Court of Ukraine No. 9-r(I)/2024 dated October 2, 2024 in the case upon the constitutional complaints of Oksana Tymoshenkova and Volodymyr Tymoshenkov regarding the compliance of paragraph 19.6 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service” No. 113–IX dated September 19, 2019 with the Constitution of Ukraine (constitutionality) (case on dismissal of employees during the period of temporary incapacity for work)**

Subjects of the right to a constitutional complaint – Oksana Tymoshenkova and Volodymyr Tymoshenkov – appealed to the Constitutional Court of Ukraine to verify the compliance of paragraph 19.6 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service” No. 113–IX dated September 19, 2019 (hereinafter, “Law No. 113”) with Articles 8.1, 22.2, 22.3, 24.1, 24.2, 43.1, 43.2, 43.6 of the Constitution of Ukraine (constitutionality).

Under paragraph 19.6 of Section II “Final and Transitional Provisions” of Law No. 113, “a prosecutor’s being on sick leave due to temporary incapacity for work, on vacation or on a business journey to the National Prosecution Academy of Ukraine to participate in its work on a permanent basis shall not be an obstacle to his/her dismissal from the office of a prosecutor in accordance with this paragraph”.

The general legal principles and guarantees of labour relations by Ukrainian citizens are enshrined in the Labour Code of Ukraine (hereinafter, the “Code”).

The Code provides for the prohibition of dismissal of an employee at the initiative of the employer during the period of temporary incapacity for work of the employee; it also sets out an exhaustive list of cases when dismissal during this period is possible.

The Constitutional Court of Ukraine notes that the guarantee against dismissal during the period of temporary incapacity for work established by the Code applies exclusively to cases of dismissal at the initiative of the employer, when the consent or expression of the employee’s will is not required.

The Constitutional Court of Ukraine concluded that international standards for the protection of employees’ labour rights contain reservations against the use of temporary incapacity for work as a ground for dismissal.

According to Article 16.3 of the Law of Ukraine “On the Prosecution Service” No. 1697–VII dated October 14, 2014 (hereinafter, “Law No. 1697”), a prosecutor is appointed for an indefinite term and may be dismissed from office, his/her powers in office may be terminated only on the grounds and in the manner prescribed by law. The issue of dismissal of a prosecutor, termination and suspension of his/her powers in office is envisaged by Section VII “Dismissal of a Prosecutor from Office, Termination, Suspension of his/her Powers in Office” of Law No. 1697.

At the same time, paragraph 19 of Section II “Final and Transitional Provisions” of Law No. 113 defines additional grounds for dismissal of prosecutors, and thus introduces a regulatory framework for dismissal that differs from the one established by Section VII “Dismissal of a Prosecutor from Office, Termination, Suspension of his/her Powers in Office” Law No. 1697 (*lex specialis*).

The Constitutional Court of Ukraine holds that a prosecutor may be dismissed from office only if there are legitimate grounds set out in the law regulating his/her status. In the event of dismissal, a prosecutor is subject only to those general guarantees of labour law (*lex generalis*) which are not covered by the provisions of the special law (*lex specialis*). Since the special law does not provide for any exceptions to the dismissal of prosecutors during the period of their temporary incapacity for work, in the event of dismissal of such persons, the imperative prohibition on dismissal during the period of temporary incapacity for work, which is a component of the constitutional right of everyone to work and to keep their job during a special period (sick leave), should be observed.

Thus, Law No. 113 narrowed the scope of rights and special guarantees for prosecutors to retain their jobs during their temporary incapacity for work, which is inconsistent with Articles 22.2, 22.3 of the Constitution of Ukraine.

The Constitutional Court of Ukraine concluded that, given that temporary incapacity for work is a condition of a person in which he/she cannot perform professional duties for a certain period of time at the place of work for objective reasons. Persons during the period of temporary incapacity for work are guaranteed by law that they will keep their job for the period of their sick leave until the end of their temporary incapacity for work, therefore, the uniform legal status of prosecutors means that their dismissal from office should not be accompanied by unjustified differences in the application of the guarantee of keeping the for the period of temporary incapacity for work as a component of the right to work.

The content of the right to work should be understood as the possibility of each person to freely choose a field of activity, profession, speciality, which will ensure an adequate standard of living for themselves and their family. The right to work is exercised by concluding an employment contract of any type or by self-employment. While working, a person has the right to proper, safe and wholesome working conditions, decent wages, rest days, holidays, etc. The right to work is related not only to the period of direct performance of a person’s labour function, but also covers the periods of hiring and termination of employment. Therefore, the prohibition on dismissal of an employee at the initiative of the employer during the period of temporary incapacity for work is an integral part of everyone’s constitutional right to work.

The Constitutional Court of Ukraine concluded that paragraph 19.6 of Section II “Final and Transitional Provisions” of Law No. 113, in the part according to which the prosecutor’s stay on sick leave due to temporary incapacity for work is not an obstacle to his/her dismissal from the office of prosecutor in accordance with this paragraph, contradicts Articles 43.1, 43.2, 43.6 of the Constitution of Ukraine.

The Constitutional Court of Ukraine finds that there is non-uniform legal regulation at the legislative level of the procedure for dismissal of prosecutors during their temporary incapacity for work, which does not meet the requirement of legal certainty as part of the rule of law principle, and, therefore, contradicts Article 8.1 of the Constitution of Ukraine.

Separate provision of paragraph 19.6 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service” No. 113–IX dated September 19, 2019, in which the prosecutor’s stay on sick leave due to temporary incapacity for work is not an obstacle to his/her dismissal from the office of prosecutor in accordance with this paragraph is declared as such that does not comply with the Constitution (unconstitutional); shall cease to be effective from the date of delivery of this Decision by the Constitutional Court of Ukraine.

Concerning the provision of the Law in the part according to which a prosecutor’s being on leave or on a business trip to the National Prosecution Academy of Ukraine to participate in its work on a permanent basis shall not be an obstacle to his/her dismissal from the office of a prosecutor in accordance with this paragraph, the constitutional proceedings on the compliance of paragraph 19.6 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service” No. 113–IX dated September 19, 2019 with the Constitution (constitutionality) shall be closed due to inadmissibility of the constitutional complaint.

**Supplementary information:**

* Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* International Covenant on Economic, Social and Cultural Rights of 1966;
* European Social Charter (revised) of 1996;
* Termination of Employment Convention of 1982 (No. 158);
* Discrimination (Employment and Occupation) Convention of 1958 (No. 111);
* Bordeaux Declaration “Judges and Prosecutors in a Democratic Society” adopted on December 8, 2009 jointly by the Consultative Council of European Judges [Opinion No. 12(2009)] and the Consultative Council of European Prosecutors [Opinion No. 4(2009)];
* Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System adopted at its 724th meeting on October 6, 2000;
* Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand.

**Cross-References:**

Constitutional Court of Ukraine:

* no. 12-rp/98, 09.07.1998;
* no. 14-rp/2004, 07.07.2004;
* no. 8-rp/2007, 16.10.2007;
* no. 5-r(І)/2019, 12.07.2019;
* no. 6-r(ІІ)/2019, 04.09.2019;
* no. 4-r(ІІ)/2021, 21.07.2021;
* no. 8-r(ІІ)/2023, 13.09.2023.