

IN THE NAME OF THE RUSSIAN FEDERATION
The Constitutional Court of the Russian Federation

Judgment

of 15th November, 2016 No. 24-II/2016

On the case concerning the review of constitutionality of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation in connection with the request of the Vologda Regional Court and the complaint of N.V.Korolev and V.V.Koroleva

The Constitutional Court of the Russian Federation composed of the President V.D.Zorkin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, S.M.Kazantsev, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Melnikov, Yu.D.Rudkin, O.S.Khokhryakova, V.G.Yaroslavtsev,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Items 3 and 3¹ of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 47¹, 74, 86, 96, 97, 99, 101, 102 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

considered in a session without holding hearings the case concerning the review of constitutionality of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation.

The reason for the consideration of the case was the request of the Vologda Regional Court and the complaint of N.V.Korolev and V.V.Koroleva. The ground for the consideration of the case was the discovered uncertainty in the question of whether legislative provisions contested by the petitioners are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu.M.Danilov, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

established:

1. In accordance with the Criminal Executive Code of the Russian Federation convicted persons, serving sentence in correctional colonies of special regime in strict conditions, are allowed to have two short-term visits during a year (Item “b” of Section 3 of Article 125); all those convicted to life imprisonment are placed in strict conditions of serving sentence upon arrival to a special-regime correctional colony; transfer from strict conditions of serving sentence to ordinary conditions of serving sentence is carried out after serving no less than 10 years in strict conditions of serving sentence on grounds indicated in Section 6 of Article 124 of this Code; if during the period of detention on remand a measure of punishment in the form of solitary confinement has not been applied to a convicted person, the term of his stay in strict conditions of serving sentence is calculated as from the day of taking into custody (Section 3 of Article 127).

1.1 By the decision of 11th April, 2016 the Belosersk District Court of the Vologda Region satisfied administrative suit brought by O.V.Matsynina, who from 26th April, 2013 was married to A.Yu.Matsynin, convicted to life imprisonment by a court sentence of 3rd February, 2014, and was acting in her own interests and the interests of their minor daughter born on 27th November, 2010 to the federal fiscal institution “Correctional Colony No. 18 of the Administration of the Federal Service for Execution of Penalties in the Yamalo-Nenets Autonomous District”. Having recognized as unlawful refusal to grant them a long-lasting visit and having imposed on the administration of the correctional institution the obligation to grant one such visit during a year, court of the first instance referred, *inter alia*, to the Judgment of the Grand Chamber of the European Court of Human Rights of 30th June, 2015 on the case “*Khoroshenko v. Russia*”.

The Administrative cases judicial board of the Vologda Regional Court, while considering the administrative case on appellate complaint of the federal fiscal institution “Correctional Colony No. 18 of the Administration of the Federal Service for Execution of Penalties in the Yamalo-Nenets Autonomous District”, in

which non-conformity of the decision of the Belosersk District Court of the Vologda Region to the operating legislation was indicated, arrived at a conclusion that there existed uncertainty as to the constitutionality of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation subject to application in this case and, having suspended appellate proceedings, sent a request to the Constitutional Court of the Russian Federation in the procedure of Article 101 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” (Ruling of 10th June, 2016).

In the opinion of the Administrative cases judicial board of the Vologda Regional Court, the contested legislative provisions, as allowing non-granting long-lasting visits to life sentence prisoners during a long time (no less than 10 years), violate constitutional requirement about respect for private and family life, which corresponds to the provisions of international legal acts (Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Recommendation of the Committee of Ministers of the Council of Europe of 11th January, 2006 Rec (2006) 2 on the European Prison Rules, Judgment of the European Court of Human Rights of 30th June, 2015 on the case “*Khoroshenko v. Russia*”), disproportionately restrict constitutional rights of a convicted person and members of his family and thereby contradict the Constitution of the Russian Federation, its Articles 15 (Section 4), 21, 23 (Section 1) and 55 (Section 3).

1.2 N.V.Korolev, convicted to life imprisonment on aggregate of sentences of 15th May, 2008 and of 10th April, 2012, having arrived to a special-regime colony on 13th May, 2009 and serving sentence in strict conditions, and his spouse V.V.Koroleva, marriage with whom was contracted on 9th September, 2009, repeatedly petitioned the Federal Service for Execution of Penalties with a request to grant them long-lasting visits.

The Administration of the Federal Service for Execution of Penalties in the Yamalo-Nenets Autonomous District explained to them that long-lasting visits are granted only after the transfer of a convicted person from strict conditions of serving sentence to ordinary ones, which for N.V.Korolev in accordance with

Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation will be possible in 2019. The Babushkin District Court of the City of Moscow, having considered administrative statement of claim brought by N.V.Korolev and V.V.Koroleva on recognition as unlawful of refusal to grant them long-lasting visits by the administration of the special-regime colony where N.V.Korolev serves sentence, by the decision of 9th February, 2016 recognized this refusal as unlawful and obliged the administration to consider this question once again. However, this decision was repealed by appellate ruling of the Administrative cases judicial board of the Moscow City Court of 4th July, 2016 and a new decision was adopted on refusal to satisfy the applications made.

As petitioners claim, the provisions of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation – to the extent to which they establish for life sentence prisoners an absolute ban on long-lasting visits during at least first 10 years of imprisonment, – exclude natural conception of a child, which with the impossibility to apply auxiliary reproductive technologies is cruel and inhuman treatment and punishment, violation of the right to family life, including of a person having committed no crimes against society and the state, and thereby contradict Articles 15 (Section 4), 21 and 23 of the Constitution of the Russian Federation as well as Articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights.

1.3 The provisions of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation have already been the subject-matter of a petition to the Constitutional Court of the Russian Federation in the procedure of the specific control of norms. Having arrived at a conclusion that constitutional rights of petitioners in their specific cases had not been violated by the contested legislative provisions, the Constitutional Court of the Russian Federation dismissed respective complaints (Rulings of 24th May, 2005 257-O on the complaint of A.A.Khoroshenko and of 9th June, 2005 on the complaint of

V.A.Zakharkin and I.N.Zakharkina). The European Court of Human Rights has recognized non-granting life sentence prisoners long-lasting visits from close relatives during first 10 years of serving sentence as violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Russian Federation (Judgment of 30th June, 2015 on the case “*Khoroshenko v. Russia*”).

As the Constitutional Court of the Russian Federation pointed out in the Judgment of 6th December, 2013 No. 27-II, the presence of a ruling of the Constitutional Court of the Russian Federation, which contains a conclusion on the absence of violation of constitutional rights of a petitioner by the contested provisions having been applied by court in his specific case, does not exclude petition to the Constitutional Court of the Russian Federation in an appropriate procedure from anyone of competent subjects with a demand to review constitutionality of the same legislative provisions. In so doing, the Constitutional Court of the Russian Federation emphasized that it passes decision on a case assessing both the literal meaning of the contested norm and the meaning attributed to it by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from its place in the system of legal norms, therefore the conclusion on violation of rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms by the provisions of Russian legislation applied in the specific case of the petitioner, contained in the final Judgment of the European Court of Human Rights, may testify to the uncertainty in the question of whether these legislative provisions are in conformity with the Constitution of the Russian Federation and – in the presence of an appropriate petition – become ground for institution of constitutional proceeding.

In such circumstances the Constitutional Court of the Russian Federation deems it possible to return to the question of constitutionality of the provisions of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation, admitting for consideration the complaint of

N.V.Korolev and V.V.Koroleva and the request of the Vologda Regional Court and merging them in one proceeding.

Accordingly, Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation are the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case insofar as on the basis of the provisions contained therein is resolved the question of regulation (restriction) of the right to long-lasting visits in respect of life sentence prisoners serving sentence in strict conditions.

2. Adopting Rulings of 24th May, 2005 No. 257-O and of 9th June, 2005 No. 248-O, the Constitutional Court of the Russian Federation proceeded from the assumption that legislative provisions granting life sentence prisoners the right to long-lasting visits not earlier than after serving 10 years of deprivation of liberty have been established by the federal legislator within the bounds of powers afforded to it and in specific cases of petitioners, on whose complaints the said Rulings were adopted, do not break fair balance between the interests of the society as a whole and the interests of the individual.

Nevertheless, within the framework of the present case the Constitutional Court of the Russian Federation – bearing in mind that final decision in the form of a judgment on the question of constitutionality of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation has not been passed earlier – deems it necessary to turn to legal positions of the European Court of Human Rights, formed after the adoption of Rulings of 24th May, 2005 No. 257-O and of 9th June, 2005 No. 248-O and leaning on new approaches to socialization of prisoners and humanization of serving criminal penalty, which have been reflected in legal documents of the United Nations Organization and the Council of Europe.

2.1 The Recommendation of the Committee of Ministers of the Council of Europe of 11th January, 2006 Rec (2006) 2 on the European Prison Rules orientates towards such management of all detention, which would facilitate the reintegration into free society of persons who have been deprived of their liberty (Principle 6),

and such arrangements for visits, which would allow prisoners to maintain and develop family relationships in as normal a manner as possible (Principle 24.4).

As is pointed out in the Memorandum of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 27th June, 2007, often life sentences and long terms of imprisonment tend to break up marital and family relationships, which derive their strength from emotional ties. If their impairment can be prevented an important step has been taken to maintain the prisoner's mental health and, often, motivation to use time in prison positively. It is important, therefore, to try to ensure that the circumstances of life sentences and long-term imprisonment do not result in this ties withering away. The maintenance of family relationships is facilitated if family visits can be easily undertaken. Efforts should be made to avoid impairing marital and family relationships, as this in turn will have detrimental consequences on the prisoner's mental health and, often, motivation to use time in prison positively.

UN General Assembly Resolution 69/172 of 18th December, 2014 "Human rights in the administration of justice" recognizes the importance of the principle that, except for those lawful limitations that are demonstrably necessitated for by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms, and recalls that social rehabilitation and reintegration of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society. The Doha Declaration (Sub-Item "j" of Item 5), approved by the UN General Assembly Resolution 70/174 of 17th December, 2015 also calls for states to consider the possibility to elaborate and enforce the policy in the interests of prisoners' families.

It is emphasized in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN General Assembly Resolution 70/175 of 17th December, 2015 that special attention shall be paid to the maintenance and improvement of such relations between a prisoner and

his or her family as are desirable in the best interests of both (Rule 106); disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order (Item 3 of Rule 43); prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals (Item 1 of Rule 58).

2.2 Guaranteeing everyone the right to respect for his private and family life, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms at the same time allows interference of public authorities with the exercise of this right in cases when such interference is in accordance with the law and is necessary in a democratic society in the interests of national security and public order, economic well-being of the country, for the prevention of disorder or crimes, for the protection of health or morals, or for the protection of rights and freedoms of others.

In its practice of implementation of this Article, the European Court of Human Rights proceeds from the assumption that keeping in custody, as any other measure of deprivation of liberty, entails by its nature a limitation of personal and family life, but essential part of the prisoner's right to respect for family life is permission or, when necessary, assistance of the authorities in maintaining contact with close relatives; accordingly, regulation of issues of granting visits to those convicted to deprivation of liberty, including for long or life terms, may not amount to inflexible restrictions, and the states-parties to the Convention are expected to develop their proportionality assessment technique enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case (Judgments of 23rd February, 2012 on the case "*Trosin v. Ukraine*", of 30th June, 2015 on the case "*Khoroshenko v. Russia*" and others).

Noting that among states-parties to the Convention for the Protection of Human Rights and Fundamental Freedoms minimum frequency of visits in places of deprivation of liberty – if it concerns life sentence prisoners – amounts to no less

than once every two months, i.e. their total number is six per year, the European Court of Human Rights recognizes that the starting point in the regulation of visiting rights of prisoners, including life sentence prisoners, at the European level is that national authorities are under an obligation to prevent breakdown of family ties and provide life sentence prisoners with a reasonably good level of contact with their families, with visits organized as often as possible and in as normal a manner as possible (Judgment of 30th June, 2015 on the case “*Khoroshenko v. Russia*”).

Thus, legal regulation of the order of granting life sentence prisoners visits of their families must, not hindering the process of execution of penalty and creating no threat to public and individual security, take into account lawful interests of these persons recognized by the state, ensure both correction of the convicted person and retention, maintenance of socially useful family relationships, allowing no excessive (in duration or in volume) interference with private life, groundless or indiscriminate restrictions, not depending on the conduct of the convicted person or his relatives, which requires finding the balance of respective public and private interests.

In this connection, the European Court of Human Rights in the Judgment of 30th June, 2015 on the case “*Khoroshenko v. Russia*” has not agreed with the idea that restriction of the right to long-lasting visits during 10-year period follows from the essence of life imprisonment, so far as in respect of the petitioner the conditions of granting this right expressed themselves in such a combination of restrictions which considerably worsened the applicant’s situation compared with the position of an average Russian prisoner serving a long-term sentence and which could not be seen as inevitable or inherent to the very concept of the penalty in the form of deprivation of liberty. Having regard to the combination of various long-lasting and severe restrictions on the applicant’s ability to receive prison visits and the failure of the impugned regime of prison visits to give due consideration to the principle of proportionality and to the need for rehabilitation and reintegration of life sentence prisoners, the European Court of Human Rights concluded that the

measure in question did not strike a fair balance between the applicant's right to the protection of private and family life, on the one hand, and the aims referred to by the respondent Government on the other, and that the respondent state has overstepped its margin of appreciation in this regard.

At the same time, the European Court of Human Rights has pointed out that the approach to assessment of proportionality of state measures taken with reference to "punitive aims" has evolved over recent years, with a heavier emphasis now having to be placed on the need to strike a proper balance between the punishment and rehabilitation of prisoners. In this connection the emphasis on rehabilitation and reintegration has become a mandatory factor that the member states need to take into account in designing their penal policies.

2.3 As follows from the Judgment of the Constitutional Court of the Russian Federation of 14th July, 2015 No. 21-II, the interaction of the European and constitutional legal orders is impossible in the conditions of subordination, so far as only a dialogue between different legal systems is the basis of their appropriate balance, and this is the respect of the European Court of Human Rights for national constitutional identity of states-parties to the Convention for the Protection of Human Rights and Fundamental Freedoms that effectiveness of its norms in the intra-state legal order in many respects depends on. Accordingly, the Constitutional Court of the Russian Federation, recognizing fundamental significance of the European system of the protection of human and civil rights and freedoms, which a judgment of the European Court of Human Rights forms part of, is ready to look for lawful compromise for the sake of maintenance of this system, but it leaves for itself the determination of the degree of its readiness, so far as it is the Constitution of the Russian Federation that outlines the limits of compromise in this issue.

Assessing conformity of legislative norms to the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation in passing decisions proceeds from the answer to the question of which interpretation – given by it on the basis of the provisions of the Constitution of the Russian Federation or given

by the European Court of Human Rights on the basis of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms – ensures human and civil rights and freedoms better in the legal system of the Russian Federation with regard to the balance of constitutionally protected values and the international-law regulation of personal legal status, meaning not only persons having directly applied for their protection, but also all those whose rights and freedoms can be affected by the contested regulation. Accordingly, if from the interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms follow increased guarantees of rights of a certain category of citizens, violating no other values protected by the Constitution of the Russian Federation, it is necessary – by virtue of the legal position expressed in the Judgment of the Constitutional Court of the Russian Federation of 14th July, 2015 No. 21-II – to determine possible ways to harmonize the approach used by the European Court of Human Rights and Russian legislation.

As applied to the question of constitutionality of legal provisions, envisaging that life sentence prisoners have the right to long-lasting visits not earlier than after serving 10 years of deprivation of liberty, the Constitutional Court of the Russian Federation, taking into account the approach which has formed in the case-law of the European Court of Human Rights on the basis of modern trends of socialization of prisoners and humanization of the conditions of serving criminal penalty, is not bound by the conclusion on absence of uncertainty in this issue, following from its Rulings of 24th May, 2005 No. 257-O and of 9th July, 2005 No. 248-O adopted within the framework of the specific control of norms, especially as the approach of the European Court of Human Rights does not come into conflict with Russia's constitutional statutes.

3. In the Russian Federation as a law-governed state human being, his (her) rights and freedoms are the supreme value, and their recognition, observance and protection is an obligation of the state. In the Russian Federation human and civil rights and freedoms are recognized and guaranteed according to the universally recognized principles and norms of international law and the Constitution of the

Russian Federation; they determine the meaning, content and implementation of laws and are guaranteed by law (Article 1, Section 1; Article 2; Article 17, Section 1; Article 18 of the Constitution of the Russian Federation).

According to the Constitution of the Russian Federation, human dignity shall be protected by the state, nothing may serve as a basis for its derogation; nobody should be subjected to torture, violence, or other severe or degrading treatment or punishment (Article 21); everyone shall have the right to the inviolability of his (her) private life, personal and family privacy, protection of his (her) honour and good name (Article 23, Section 1); human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morals, health, rights and lawful interests of other people, for ensuring the defence of the country and the security of the state (Article 55, Section 3).

As follows from Article 71 (Items “c” and “n”) of the Constitution of the Russian Federation in the interconnection with its Articles 22, 32 (Section 3), 49 (Section 1) and 50 (Section 3), the federal legislator is empowered to envisage life imprisonment as a measure of penalty, meted out to a person convicted of a crime under a court sentence, as well as the procedure and conditions of execution and serving of this kind of punishment. Possessing wide discretion in regulating these issues, it must at the same time observe general principles of legal, including criminal-law, responsibility, following from Articles 1, 2, 15, 17, 18, 19, 49, 50, 54 and 55 of the Constitution of the Russian Federation and recognized by the Russian Federation as a law-governed state, such as justice, equality, proportionality, legality, guilt, humanism, orientating itself not only towards constitutional fixation of the said principles and their interpretation by the Constitutional Court of the Russian Federation, but also towards corresponding legal positions of the European Court of Human Rights in their dynamics.

Fixing in Article 50 (Section 3) the right of any person convicted of a crime to request pardon or mitigation of the punishment, the Constitution of the Russian Federation thereby does not exclude the possibility of release of the convicted

person, including the person convicted to life imprisonment, which obliges the federal legislator in determining restrictions constituting the essence of such punishment to bear in mind the necessity to achieve all punitive aims, which in accordance with Section 2 of Article 43 of the Criminal Code of the Russian Federation are not only restoration of social justice and prevention of the commission of new crimes, but also correction of the convicted person.

Accordingly, the federal legislator, regulating the conditions of serving life imprisonment, is obliged to introduce only necessary restrictions, ensuring, if possible, not only law-abiding conduct of the convicted persons during serving sentence, but also their correction, as well as preparation for possible release, allowed by the Constitution of the Russian Federation on the basis of an act of pardon, amnesty or a court decision on parole. In so doing, it must proceed from the idea that on the whole the convicted persons possess the same rights and freedoms as other citizens, with the exceptions determined by peculiarities of their personality, crimes committed by them and special regime of places of deprivation of liberty, and therefore restrictions introduced by it, as well as the criteria of their differentiation, must meet the requirements of justice, equality, proportionality, legality and humanism (Ruling of the Constitutional Court of the Russian Federation of 9th June, 2005 No. 248-O).

The establishment by the federal law of criminal responsibility and punishment without account taken of the offender's personality and other circumstances, having objective and reasonable substantiation and making for adequate legal assessment of public danger of both the criminal action itself and the person having committed it, and application of measures of responsibility without taking into account circumstances characterizing the offender's personality would contradict the constitutional prohibition of discrimination and principles of justice and humanism, expressed in the Constitution of the Russian Federation. The necessity to observe differentiated approach also to determination in the criminal-executive legislation of the conditions of serving specific kinds of

punishment follows from the adduced legal position, expressed in the Judgment of the Constitutional Court of the Russian Federation of 19th March, 2003 No. 3-II.

4. In accordance with the Correctional Labour Code of the RSFSR, in special-regime correctional colonies served sentence men, convicted in the presence of a particularly dangerous recidivism of crimes, life sentence prisoners, as well as persons, to whom death penalty had been commuted to life imprisonment in the procedure of pardon; such convicted persons had the right to three short-term and two long-lasting visits (Sections 1 and 2 of Article 65). The Criminal Executive Code of the Russian Federation brought into effect on 1st July, 1997 has altered the order of serving life imprisonment, having excluded granting of long-lasting visits during the entire period of a convicted person's stay in strict conditions and having simultaneously set unconditional (mandatory) retention of the regime of such conditions during first 10 years of serving sentence.

Bearing in mind that a complex moratorium on application of the death penalty, rendering concrete guarantees of the right to life fixed in the Constitution of the Russian Federation, is effective in the Russian Federation and there have formed steady guarantees of the right not to be subjected to death penalty (Ruling of the Constitutional Court of the Russian Federation of 19th November, 2009 No. 1344-O-P), life imprisonment at present actually replaces the death penalty (Judgment of the Constitutional Court of the Russian Federation of 20th May, 2014 No. 16-II).

Life imprisonment appears to be the strictest of all really possible at the moment measures of punishment for the most dangerous kinds of crimes (according to Section 1 of Article 57 of the Criminal Code of the Russian Federation, for the commission of particularly grave crimes, infringing upon life, as well as for the commission of particularly grave crimes against the population's health and morals of society, the safety of society, against the sexual inviolability of minors aged under fourteen), which contemplates the greatest complex of restrictions of rights and freedoms for persons having committed them. Accordingly, establishment for persons convicted to life imprisonment of more

prolonged (compared with persons sentenced to certain terms of deprivation of liberty) period of strict conditions of serving sentence is aimed at differentiation of the conditions of serving sentence with account taken of the character of the crimes committed and severity of the punishment meted out for them and as such creates pre-requisites for the achievement of punitive aims.

4.1 Institutes of educational influence (including measures of encouragement and sanction) and transfer of prisoners from some conditions of serving sentence to other belong to the most important elements of Russia's system of execution of punishments, in regulating which the federal legislator cannot but bear in mind that they not only potentially make for the correction of a convicted person, but are also intended to ensure realization of the rights of his family members in the field of family relationships.

Proceeding from this, the federal legislator has envisaged as one of the measures of encouragement of persons sentenced to deprivation of liberty the possibility to grant them, apart from visits to which they are entitled by virtue of the law, up to four additional short-term or long-lasting visits during a year (Item "f" of Section 1 of Article 113 and Section 2 of Article 114 of the Criminal Executive Code of the Russian Federation), having specified neither restrictions nor exclusion of their application in respect of life sentence prisoners. Article 89 of the Criminal Executive Code of the Russian Federation, fixing that those sentenced to deprivation of liberty are granted short-term visits of 4-hour duration and long-lasting visits of three twenty-four-hours duration at the correctional institution's premises from a spouse, parents, children, adoptive parents, adoptees, brothers and sisters, grandfathers, grandmothers, grandchildren, and on the authorization of the head of the correctional facility – from other persons (Sections 1 and 2), in essence, does also recognize the right to long-lasting visits of all categories of persons convicted to deprivation of liberty, and therefore of persons convicted to life imprisonment. Meanwhile, in the law-applying practice, as follows from the answer of the Federal Service for Execution of Punishments received by the Constitutional Court of the Russian Federation in consideration of the present case,

these legislative provisions, in their interconnection with Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation, have been attributed meaning, excluding granting life sentence prisoners long-lasting visits as a measure of encouragement prior to their transfer to ordinary or relieved conditions of serving sentence.

However, according to the provisions of Article 127 of the Criminal Executive Code of the Russian Federation, transfer of life sentence prisoners from strict conditions to relieved ones is carried out after serving no less than 10 years in strict conditions of serving sentence on grounds indicated in Section 6 of Article 124 of this Code (Section 3); after serving no less than 10 years in ordinary conditions of serving sentence convicted persons may be transferred to relieved conditions on grounds indicated in Section 2 of Article 124 of this Code (Section 4); convicted persons recognized as malicious infringers of the established order of serving sentence and serving sentence in relieved conditions are transferred to ordinary or strict conditions of serving sentence, and convicted persons serving sentence in ordinary conditions – to strict conditions of serving sentence; repeated transfer to ordinary or relieved conditions of serving sentence is carried out in the order envisaged by Sections 3 and 4 of this Article (Section 5).

Thereby during first 10 years of serving life imprisonment transfer of the convicted person, regardless of the character of his conduct, to other conditions of serving sentence is impossible, which in the law-applying practice leads to the interpretation of the provisions of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation as totally excluding granting such convicted persons during this period of long-lasting visits, allowing neither to assess the character of their conduct (both demonstrating striving for correction and reflecting negative attitude towards socially-significant values) nor individualize measures of educational influence on them. And since application of encouragement measures with the aim of educational influence on a prisoner to a decisive degree remains within the margin of appreciation of the administration of the criminal-executive institution, granting life sentence prisoners

long-lasting visits as a measure of encouragement cannot be regarded as the only form of solution of the constitutional problem posed by petitioners in this case.

4.2 Thus, the provisions of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation do not conform to the Constitution of the Russian Federation, its Articles 15 (Section 4), 17 (Section 1), 21, 23 and 55 (Section 3) in the interconnection with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights to the extent to which they exclude the possibility to grant long-lasting visits to life sentence prisoners during first 10 years of serving sentence.

In order to strike a balance of constitutionally significant values and in the interests of subjects of the law, the Constitutional Court of the Russian Federation, guided by Item 12 of Section 1 of Article 75 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, deems it possible to set the following order of execution of the present Judgment:

the federal legislator is required, guided by the requirements of the Constitution of the Russian Federation and bearing in mind legal positions of the Constitutional Court of the Russian Federation and the European Court of Human Rights expounded in the present Judgment, to envisage the conditions and procedure of realization by life sentence prisoners of the right to long-lasting visits;

until appropriate amendments following from the present Judgment have been made to the legal regulation, life sentence prisoners must be granted the possibility to enjoy one long-lasting visit per year from persons indicated in Section 2 of Article 89 of the Criminal Executive Code of the Russian Federation. With this in mind, reconsideration of law-applying decisions passed on the case of citizens N.V.Korolev and V.V. Koroleva, in connection with which they have petitioned the Constitutional Court of the Russian Federation, is not required with the object of the protection of their constitutional rights.

Proceeding from the above and guided by Articles 47¹, 71, 72, 74, 75, 78, 79, 80, 100 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h o l d s:

1. To recognize the provisions of Item “b” of Section 3 of Article 125 and Section 3 of Article 127 of the Criminal Executive Code of the Russian Federation to the extent to which they exclude the possibility to grant long-lasting visits to life sentence prisoners during first 10 years of serving sentence as not conforming to Articles 15 (Section 4), 17 (Section 1), 21, 23 and 55 (Section 3) of the Constitution of the Russian Federation in the interconnection with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights.

2. The federal legislator is required, proceeding from the requirements of the Constitution of the Russian Federation and bearing in mind legal positions expressed by the Constitutional Court of the Russian Federation in the present Judgment, as well as corresponding legal positions of the European Court of Human Rights, to set the conditions and procedure of realization by life sentence prisoners of the right to long-lasting visits.

Until appropriate amendments following from the present Judgment have been made to the legal regulation, life sentence prisoners must be granted the possibility to enjoy one long-lasting visit per year from persons indicated in Section 2 of Article 89 of the Criminal Executive Code of the Russian Federation.

3. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon official publication, shall be directly applicable and shall not require confirmation by other authorities and officials.

3. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and on the official

Internet-portal of legal information (www.pravo.gov.ru.) The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation.

No. 24-II