

Abstract

Temporary release from prison or provision of escort for urgent family reasons as part of the right to respect for private and family life of detained persons

The thesis deals with the issue of exercising the right to respect for private and family life by persons deprived of personal liberty due to detention or imprisonment in the form of the possibility to temporarily leave prison space, accompanied by an escort or alone, for serious family reasons. By these the thesis means attending the funeral of a close relative or the possibility to visit them in the hospital while suffering from a life-threatening condition. While in the case of persons remanded in custody, this issue is not regulated in any way by legal or secondary legislation, in the case of persons serving a custodial sentence in prisons with increased security or for life, it is partially explicitly prohibited. In practice, therefore, these persons are barred from exercising their right under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the case of persons in the “regular mode“ of serving a prison sentence, the execution of this right is dependent on the discretion of the prison director, who does not have to justify his informal decision to suspend the sentence, which is not amenable to review, in any way. The European Court of Human Rights has, however, consistently held for 20 years that a ban on attending a close relative’s funeral or visiting such a person in a hospital constitutes a violation of Article 8 and requires that each such case shall be treated individually and the exercise of the right should be made possible unless the infringement is necessary in a democratic society. Also, according to the European case-law, the restrictions imposed in order to limit the access to exercise of basic human rights cannot be discriminatory in any way and any difference between the legal regimes of various groups of people in a comparable position must be justified by pursuing a legitimate aim. The thesis therefore examines whether the situation in the Czech Republic is consistent with the case-law of the ECtHR and suggests possible changes.