УДК 34.341.161

ANALYSIS OF THE EUROPEAN COURT OF HUMAN RIGHTS' DECISIONS DURING 2014

Analysis of the European Court of Human Rights' decisions in 2014. Main articles of UN Convention «For the Protection of Human Rights and Fundamental Freedoms», which were violated in Ukraine, are investigated. A problem that the European Court of Human Rights' decisions are not satisfied in Ukraine is detailed.

Key words: Convention, claim, decision, case, violation.

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In the previous issue of «Administrative Law and Process» journal we have studied the European Court of Human Rights judgments execution (hereinafter - the Court) in particular, cases against Ukraine, adopted in 2013, and have made the analysis of these decisions.

During 2014 the European Court of Human Rights adopted 28 decisions on Ukraine. In these decisions the application of 571 citizens of Ukraine were considered.

Of these, 9 decisions were made as a result of police officers and law enforcement ill-treatment cases during the pre-trial investigation, detention or sentence. Unfortunately, the cases of citizens' complaints on violation of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) are not rare in Ukraine.

In the case of «Lobas against Ukraine», the Court noted that the applicant's complaint is unfounded, as the applicant has not shown convincingly that he was abused by the police. In particular, the Court notes that the applicant is inconsistent, and in addition, there is no medical evidence to support the applicant.

However, cases in which the Court considered applicants' claims admissible have a significant percentage. In particular, in 2014 among such cases there was a case «Danilov against Ukraine», «Gerashchenko against Ukraine», «Sergey Savenko against Ukraine», «Dzhulai against Ukraine», «Witkowski against Ukraine». As a result of these cases procedures the decisions requiring the state to pay to the applicant from 7 000 to 27 000 thousand

Euros as compensation for moral damage within three months from the date on which the judgment becomes final, were rendered by the Court.

It should be noted that there are some cases where abuse is manifested not by the authorities, but by other people. Thus, in the «Alexander Nikonenko against Ukraine» case the applicant confirmed that the state has not undertaken an effective investigation on the damage that was caused to the applicant. The court in its decision stated that Article 3 of the Convention requires from States to introduce effective criminal law to prevent offenses against personal security guaranteed by law enforcement mechanisms on preventing, combating and punishing for violations of such rules. On the other hand, a priori clear is that the state's general obligation under Article 1 of the Convention is to guarantee to everyone, within its jurisdiction, the rights and freedoms defined in the Convention, taken in conjunction with Article 3 of the Convention, cannot be interpreted as which requires the state to make it through its legislation guaranteed the safety of any person from inhuman or degrading treatment of another person, and if that happens – that criminal proceedings shall necessarily lead to a particular sentence.

Noteworthy is also the case of «Yurii Illarionovych Schokyn against Ukraine». Citing Articles 2, 3 and 6 of the Convention, the applicant complained that his son died as a result of torture he suffered during his detention in prison, and that all perpetrators were never found and sentenced and there has been no serious investigations of these facts. As a result of this case examination, the Court held that, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the state has to pay 30 000 (thirty thousand Euros) in respect of moral damage.

It should be noted that the European Court of Human Rights often considers cases demonstrating separate opinion of a Judge that allows to see alternative views and the ability to resolve a case «from a different angle».

This particular fact of demonstrating a separate opinion of a Judge we can witness in one of the cases in 2014, on the violation of Article 3 – cruel treatment of a person. Thus, in the «Tarasov against Ukraine» the Judge stated his disagreement with one point of decision only, agreeing with the opinion of the Court as a whole.

In cases «Lyvada against Ukraine», «Taran against Ukraine» the applicants complained to the Court according to § 3 of Article 5 of the Convention on Human Rights and Fundamental Freedoms Protection, of illegal and excessive periods of retaining them in custody. In particular, one of the applicants complained that his administrative detention and retaining in custody by order of an investigator without a court order was illegal, and the length of his pre-trial detention was excessive. In its judgment, the Court notes that Article 5 § 3 of the Convention requires that the justification of any detention – no matter how short it is-shall be conclusively proven by public authorities and the convictions «for» and «against» exemption, including the risk that the accused may interfere with proper administration of proceedings, shall not to be taken abstractly (in ab-

stracto), but shall be supported by factual evidence.

In addition to the above named cases, it's not a rare situation of illegal detention by the police. Thus, in the «Belousov against Ukraine», the applicant complained that his detention was not documentarily registered and had no legal basis. The Court has repeatedly pointed out that freedom is too important to people in a democratic society to lose the right for protection on the Convention only because a person appears to confess to custody. Detention may violate Article 5 even if the named person has agreed to this. The Court further reminds that unacknowledged detention is a complete negation of the fundamentally important guarantees containing in Article 5 of the Convention, and is the most serious breach of this provision. Lack of documenting of things such as date, time and place of detention, the name of the detainee, the reasons for detention and name of the person who made the arrest should be seen as a failure on the legality and discrepancy with the purpose of Article 5 of the Convention.

The case «Zinchenko against Ukraine» is directly related to the aforementioned cases in which the applicant claimed that the conditions of his detention in prison in Odessa were intolerable, he had no effective remedies for his complaints, and his right to counsel in criminal proceedings was violated.

The aforementioned case is demonstrating the next problem, which, unfortunately, is present in local detention centers. In case «Anatolii Rudenko against Ukraine» the applicant complained under Article 8 of his compulsory psychiatric treatment. In its judgment, the Court notes that the detention in custody of the person considered mentally ill shall meet the objectives of Article 5 § 1 of the Convention, which is to prevent the deprivation of liberty of persons in arbitrary manner consistent with the objectives and restrictions set forth in subparagraph «e». Due to the last mentioned the Court reiterates that according to its established practice a person cannot be considered a «mentally ill» and deprived of liberty, if not met the three following minimum conditions: first, the objective examination should reliably show the person is mentally ill; secondly, the mental disorder must be such that a person is due to compulsory detention in a psychiatric hospital; thirdly, the need for the continued detention in a psychiatric hospital depends on the stability of the disease.

It's worth mentioning that improper medicine in Ukraine causes many problems and as a result the claims to international institutions. Thus, in the «Arskaia against Ukraine» the applicant complained that her son died due to lack of proper medical treatment and the lack of an effective investigation of the circumstances of his death. The Court noted that the obligations of the Convention require the States to establish appropriate legislation that would have forced hospitals, both public and private, to take appropriate measures to protect the lives of their patients. They also require the establishment of an effective independent judiciary in order to determine the cause of patient's deaths who were on treatment in both the public and private sector, and prosecute those responsible.

The case «Budchenko against Ukraine» turned out to be interesting enough in 2014. The case was an initiated by the applicant's claim against Ukraine to the Court under Article 34 of the Convention. The applicant alleged, in particular, that the courts had not released him from the payment for the consumed electricity and gas according to the law. According to this case, the applicant has been working in the mining industry for about thirteen years. Current legislation at the material time freed him from paying for electricity and natural gas. The Court noted in its decision that the applicant's release is confirmed by the national authorities and, in particular, national courts (see. Paragraphs 8 and 10). Consequently, the applicant had recognized property interest under Article 1 of Protocol. The Court also notes that, nevertheless, the requirement of the applicant's release from the payment was denied because there was no mechanism for implementing the relevant legislative provisions, which constitutes an interference with the applicant under Article 1 of the Convention Protocol.

The case «Pichkur against Ukraine» is equally interesting, in which the applicant complained that he had been denied his old age pension basing on his residence place in violation of the Convention Article 14 in conjunction with Article 1 of the first Protocol. The applicant affirms that the discrimination in his situation was caused by the decision of the Constitutional Court of Ukraine dated 7 October 2009. Despite the fact that the Constitutional Court of Ukraine did not have retroactive effect, the provisions of the Convention, including Article 14 of the Convention, which prohibited discrimination, was in force for Ukraine on 11 September 1997. Therefore, from that date, the state should have acted in accordance with its responsibilities and had no right to discriminate against pensioners.

Another and probably one of the most relevant to today's Ukraine is the case of «Shmushkovych against Ukraine», in which the applicant complained under Article 11 of the Convention that the state unlawfully interfered with his right to freedom of peaceful assembly, amercing him for reporting a picket, which he organized, submitted with deadline delay. In its judgment, the Court noted that the intervention would violate Article 11 of the Convention unless it is «prescribed by law», pursues one or more legitimate aims under paragraph 2 and «necessary in a democratic society» to achieve those objectives. The Court reiterates that the expression «prescribed by law» in Article 11 of the Convention requires not only that the impugned measure should have some basis in national law; it also relates to the quality of the law in question. The law should be made available to interested parties and formulated with sufficient precision to enable them – if necessary by providing relevant information – predict the extent that is reasonable in the circumstances, the consequences which may result from its performance.

At the end of the analysis we can't help specifying the «traditional» cases for Ukraine, concerning the lengthy of execution of judicial decisions. Such cases are «Shtefan and Others against Ukraine», «Yavorovenko and Others against Ukraine», «Filatova and others

against Ukraine», «Shchukin and Others against Ukraine». In all these cases the Court made a decision, according to which, the respondent State is to execute the decisions of national authorities approved for applicants, which are deemed to be fulfilled, within three months, and pay 2 000 (two thousand Euros) to each of the applicants or their successors.

The European Court of Human Rights practice shows that the problem of excessive length of proceedings and delays in the execution of judgments is mainly related to structural problems in the organization of the judiciary.

According to the Chairman of the Supreme Court of Ukraine, the law in Ukraine today is unbalanced, ill-considered, containing a number of guarantees not supported economically, which cannot be performed because of the limited resources available to the state. Failure of judgments enforcement in such cases is a derivative, secondary problem, resulting unbalanced law.

According to the Ministry of Justice of Ukraine representatives, the State may sometimes justify the delay in the trial court, but, again, taking into account the criteria of the European Court, particularly if the case is rather difficult, or if the reason of extremely long trial term the was the behavior of the applicant, who later claimed to the European Court.

It should be noted that the problem of the length of proceedings exists not only in Ukraine, it is an urgent problem in Italy or Poland, for which were also involved in European Court trials.

We hope that the current global judicial reform to be held in Ukraine, changes in legislation, new laws, which were based on the Law of Ukraine «On the right to a fair trial» dated 12 February 2015, based on the recommendations of the Council of Europe and the positive foreign countries experience, will be a significant step forward in the development of the judicial system of Ukraine.

Утченко К. Ю. Аналіз рішень Європейського суду з прав людини за 2014 р.

Проаналізовано рішення Європейського суду з прав людини за 2014 рік. Досліджено основні статті Конвенції ООН «Про захист прав людини та основоположних свобод», на порушення яких скаржаться громадяни України в заявах до Суду. Деталізовано проблему невиконання прийнятих рішень національними судами.

Ключові слова: Конвенція, позов, рішення, справа, порушення.

Утченко Е. Ю. Анализ решений Европейского суда по правам человека за 2014 г.

Проанализированы решения Европейского Суда по правам человека за 2014 год. Исследованы основные статьи Конвенции ООН «Про защиту прав человека и основных свобод», на нарушение которых подают жалобы граждане Украины в Суд. Детализировано проблему неисполнения принятых решений национальными судами.

Ключевые слова: Конвенция, иск, решение, дело, нарушение.

Стаття надійшла до редакції 14.03.2015