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ANALYSIS OF THE EUROPEAN COURT OF HUMAN RIGHTS' DECISIONS IN 2013

Analysis of the European Court of Human Rights' decisions in 2013. Main articles of UN Convention «For the Protection of Human Rights and Fundamental Freedoms», which were violated in Ukraine, are investigated. There is a problem that the European Court of Human Rights' decisions are not complied in Ukraine with.

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

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Today the UN Convention «For the Protection of Human Rights and Fundamental Freedoms» (hereinafter – the Convention) is quite reasonably rated as one of the greatest achievements of the European Council, which is a fundamental basis of all international human rights and freedoms law complex and legitimate interests and needs of people. Having ratified the Convention by the Law of Ukraine «On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950» in 1997, Ukraine has obtained the most effective system of rights and freedoms. But at the same time, the country has undertaken a number of responsibilities. According to the Law of Ukraine «On the decisions implementation and practice application of the European Court of Human Rights» a decision of the European Court of Human Rights is obligatory for execution by Ukraine. It's the European Court of Human Rights which is the most authoritative international body exercising judicial functions, and one of the most effective means of protecting the legitimate interests of the individual.

During 2013 the European Court of Human Rights adopted 23 decisions against Ukraine. In the above-mentioned decisions, 1241 applications from the citizens of Ukraine were examined. 11 decisions of them were taken as a result of proceedings concerning long non-enforcement. The decisions of national courts have come into force and became enforceable. However, the applicants have not achieved the implementation of decisions within the prescribed time due to the inability

of the State to comply with them. In 7 of the 11 decisions the court rendered identical decisions – the respondent state is to execute judicial decisions taken in favor of the applicants that remain unfulfilled, and pay within three months 3000 (three thousand euro) or 1500 (one thousand five hundred) each applicant or his / her heir (the case «Varava and others against Ukraine», the case «Ternovik and Others against Ukraine», the case «Shtabovenko and Others against Ukraine», the case «Rozhenko and Others against Ukraine», the case «SPE» Feia «and Others against Ukraine», the case «Kononova and Others against Ukraine»). These amounts are pecuniary and non-pecuniary damage and court costs and expenses, and should be paid together with all taxes that may be assessed, and converted into the currency of the respondent State at the date of payment. In other 4 decisions the Court rendered similar to the above mentioned decisions, but the settled amount was 2,000 (two thousand euro) to each applicant or his/her heir (the case «Nechiporenko and Others against Ukraine», the case «Hvorostianoi and Others against Ukraine», the case «Pysarskii and Others against Ukraine»). All these cases contain an indication that in three months expiry and until settlement of these amounts the simple interest equal to the marginal lending rate of the European Central Bank during the default period should be added; to which three percentage points should be added.

In the case of «Habrovski against Ukraine» the Court, in the circumstances of the case, namely that the state authorities of Ukraine spent nearly a year on the appropriate action and it took nearly two years to make the first relatively successful attempt to execute it, found violation of Article 8 of the Convention, as the action of bailiffs were uncoordinated and formalistic and the performance inefficiencies led to serious rupture of family ties.

In the cases «Tkachenko against Ukraine», «Savenkova against Ukraine», «Kravets against Ukraine» the applicants complained to the Court according to Article 6 § 1 of the Convention on Protection of Human Rights and Fundamental Freedoms of the incompatible duration of proceedings on their claims for «reasonable time» and according to Article 13 of the European Convention on Human Rights and the lack of an effective state remedy in this regard.

In Ukraine there are often cases of citizens' complaints on violation of Article 3 of the Convention on Protection of Human Rights and Fundamental Freedoms. Article 3 of the Convention prohibits torture and inhuman or degrading treatment. Abuse within the scope of Article 3 is only if achieved a minimum level of severity. However, in the case «Erokhin against Ukraine», the Court noted that the applicant had not filed a national arguable complaints of ill-treatment, which would have caused the procedural obligations of the State under Article 3 of the Convention to carry out an effective investigation into the allegations of ill-treatment. The applicant in the «Yuri Volkov against Ukraine» case complained as to Article 3 that after his arrest on December 6, 2003 he was a subject to psychological pressure, and he had been beaten by the police in order to extract a confession of committing robbery and murder.

He also complained about the conditions of his detention at the police station, and he claimed to have been deprived of food, sleep and medication. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. The court in assessing the evidence relies on the criterion of proof «beyond reasonable doubt». However, such proof may follow from a set of attributes or unrebutted presumptions sufficiently strong, clear and concordant with each other. When all or much of the information about the events in question, is known only to the authorities – as it happens to be in the case of prisoners who are under the control of the authorities – and when such persons during their imprisonment get injuries, it generates the corresponding reasonable presumption of fact. This burden of proof can be considered pertinent to the authorities, because they have to provide a satisfactory and convincing explanation. The statement of the complainant is recognized to be inappropriate in the «Nikolaienko against Ukraine» case on ill-treatment during the investigation of the criminal case.

In the case of «Diachenko against Ukraine» the applicant complained to the European Court of Human Rights according to § 3 of Article 5 of the Convention on Protection of Human Rights and Fundamental Freedoms of excessive detention period. The Court found violation of Article 5 § 3 of the Convention due to the lack of court decisions on appropriate grounds for detention. The total period of detention was about 3 years and 2 months. In addition, the national authorities have never considered alternative precautions to detention.

In the case of «Kvashko against Ukraine» the applicant complained according to Article 5 § 1 of the Convention that his detention from 1 to 4 May 2005 and his arrest on May 4, 2005 were illegal. The Court emphasized that declaring the freedom of paragraph 1 of Article 5 means the natural liberty of a person, and its purpose is to ensure that no one is deprived of liberty in arbitrary ways. Instead, the applicant is continuously in custody for 6 days, which was not the subject to any proceedings before 6 May 2005. In this case, after the hearing the court held that there was a violation of paragraph 1, 3 and 5 of Article 5 of the Convention.

Noteworthy is the case «Harnaha against Ukraine», in which the applicant claimed that the state authorities interfered in her private life, rejecting her application to change her patronymic name, and she complained of Article 8 of the European Convention on Human Rights and Fundamental Freedoms violation. In this court decision contains a detailed description of the national legislation (laws and regulations) in this domain. In addition, the court clearly says that in a number of cases against Ukraine it is determined that the courts of general jurisdiction in Ukraine, including the Supreme Court of Ukraine, have no authority to recognize the laws invalid. In addition, under the laws of Ukraine an individual has no right of petition to the Constitutional Court of Ukraine, which has the exclusive authority to recognize a legal rule to be unconstitutional.

Thus, if the applicant's complaint directly relates a law, which is clear and unambiguous, the Court concludes that

such an applicant was not legally protected in a way that could be considered effective in the circumstances of his case. Interesting is the fact that the Court held unanimously that there had been a violation of Article 8 of the Convention. However, the fact that the affirmation of the violation is a sufficient satisfaction in itself for any non-pecuniary damage suffered by the applicant, is recognized only by four votes to three.

Among the acts of the European Court of Human Rights in 2013 there's a well known decision as to violation of Article 34 of the Convention on Protection of Human Rights and Fundamental Freedoms in the case of a citizen of Ukraine Iulia Volodymyrivna Tymoshenko. The mentioned decision is the most comprehensive and reasonable in the content and contains a detailed description of each complainant application. European Court of Human Rights held unanimously that in the case of existing violations of paragraph 1, 4 and 5 of Article 5 of the Convention on the Protection of Human Rights and Fundamental Freedoms and Article 18 in conjunction with Article 5 of the Convention. The court held by four votes to three that no violation of Article 3 of the Convention concerning the alleged ill-treatment of the applicant during her transportation to the hospital on April 20, 2012 took place and on the effectiveness of investigations at the national level.

The European Court of Human Rights decisions in most European countries are acts of direct action, because they are brought to the attention of the relevant authorities and courts, whose actions have caused the violation, and such measures are sufficient to prevent further infringements of the same nature. As a result – the courts prevent further similar violations at the stage of national remedies application as to human rights protection, besides they can adjust their own work appropriately.

Statistically, 9 out of 10 of the European Court of Human Rights' decisions are not satisfied in Ukraine. However, the concern is not only non-enforcement, but extremely large number of Ukrainian citizens' claims to international institutions.

Утченко К. Ю. Аналіз рішень Європейського суду з прав людини 2013 року.

Проаналізовано рішення Європейського суду з прав людини за 2013 рік. Досліджено основні статті Конвенції ООН «Про захист прав людини та основоположних свобод», на порушення яких скаржаться громадяни України в заявах до Суду. Виявлено проблему невиконання прийнятих рішень національними судами.

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

Утченко К. Ю. Анализ решений Европейского суда по правам человека в 2013 г.

Проанализированы решения Европейского Суда по правам человека за 2013 год. Исследованы основные статьи Конвенции ООН «Про защиту прав человека и основных свобод», на нарушение которых подают жалобы граждане Украины в Суд. Обнаружено проблему неисполнения принятых решений национальными судами.

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

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