

BATAN YU. D.

National University «Odesa Law Academy»,
Assistant Professor at the Department of Constitutional Law

**THE EUROPEAN COURT OF HUMAN RIGHTS AS AN INSTITUTION
WITH THE PREVENTIVE PURPOSE**

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Monitoring and assessment actors for preventing human rights violations represent the largest category. They contain participants of preventive mechanism, which have co-ordination (signing, expertize), validating, registration, appeal (handling complaints, ability of chance or reverse of judgement), investigation and punitive (ability to investigate offences and prosecute), monitoring (accounting, data collection and analysis, inspection and attendance a certain places), inspection (holding inspections and audits), recommendation (ability to provide recommendations and opinions) and other monitoring and assessment authorities concerning the activity of other subjects.

European Court of Human Rights (*hereinafter – the ECtHR*) is one of monitoring and assessment bodies aimed to prevent human rights violation. This paper aims to demonstrate the preventive activity work of ECtHR.

In 1997, professor U. Kriebaum pointed out that “strictly speaking, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is the only purely preventive human rights instrument, ... Inter-American Human Rights Court, the Inter-American Human Rights Commission and of their counterparts on the European and the global level ..., all of them being elements of human rights instruments, have the prevention of human rights violations as their prime objectives” [2, p. 159]; “only one international human rights instrument primarily devoted to prevention has been established, viz. the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment” [2, p. 188].

So, the conclusion about the preventive purpose of the normative act is made in case when the word “prevention” is mentioned in its title or when it is clearly defined in the aim of its own. In fact, the presence or absence of the word “prevention” in the title or text of a convention or other normative act can not reveal the presence or absence of a preventive purpose of a certain act.

European Court of Human Rights functioning, assignment of individual and general measures, interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms as the main fence against violations of human rights on the continent, etc., all this reflect the preventive purpose of the ECtHR, no matter how many times the word «prevention» is used in its normative acts or judgements.

1. The purpose of establishment

The previous experience of massive violations of human rights by the Nazi regime in Germany and other territories being occupied by the Third Reich caused the creation of a European system aimed to protect fundamental human rights and freedoms. Functioning of supranational institutions aimed at guaranteeing of human rights in case of their violation by the state became the basis of such system [5, p. 65]. That is, the fact of emergence of the European Court of Human Rights as an institution itself was caused by need to prevent the possibility of new massive human rights violations by the state. Moreover, at that time, the German State rarely violated its own laws, but these very laws violated human rights. To prevent such violations in future it was necessary to establish additional supranational institution that would primarily consider disputes between the individual and the state regarding violations of human rights by the last one.

2. Equal distance from the both parties

Despite the concept of separation of powers, there is still remains to be influence on the judiciary by the rest authorities. Instead, the European Court of Human Rights, being equally far-off distant from the applicants and the State, prevents the possibility for public authorities to take an advantage of such effect or even to create it.

3. Application of general and individual measures

If the European Court of Human Rights recognizes the violation of human rights guaranteed by the European Convention on Human Rights, the state must pay the material and, sometimes, moral compensation awarded by the ECtHR, as well as eliminate the violation of the rights of each person prevailed at the ECtHR, and at last take measures aimed to prevent similar violations. The very fact of the power of the ECtHR to award compensation, to resume the status applicant had before the violation, etc., should be interpreted as a preventive mechanism, since the state is more interested in eliminating the causes and conditions of violations of certain human rights, without bringing the ECtHR action.

4. Application of ECtHR practice and experience in domestic law-making and enforcement

Besides, ECtHR has a preventive assignment. That is because deputies and other law enforcement bodies usually take into account possibility of suing the ECtHR while passing and applying laws. The activity of a certain judge analyzed via its judgements also could be recognized as preventive phenomenon of ECtHR. The same could be stated regardless the laws which violate Convention for the Protection of Human Rights and Fundamental Freedoms. But it is important to be previously established by the ECtHR.

Establishment of an obligation to pay damages to a person who suffered with an unfair judgement or illicit act or omission committed by a public authority or its officers could be an additional preventive measure to avoid human rights violation.

5. Application of punitive measures.

Paulo Pinto de Albuquerque, the ECtHR's judge, and Anne van Aaken prove that the ECtHR "uses punitive damages implicitly" and believe that the

Court should do so more frequently in the future in order to prevent repetition of wrongful conduct by states [4, p. 230].

Punitive or exemplary are the damages which “being established with the purpose of ... preventing repetition of wrongful act by the offender, or emulation by third parties, without being limited to mere compensation for the pecuniary and non-pecuniary losses caused to the claimant, including loss of profit” [4, p. 230].

6. Interpretation of the Convention

The ECtHR prevents ambiguity, legal uncertainty, discrimination, and at last violation of the relevant conventional rights by interpreting the Convention’s provisions on this very rights as well as their realization, both the interpretation of proportionality (adoption of the three-part proportionality test) of human rights restrictions.

For example, in the judgment of November 6, 2018 in the case of *Burlia and Others v. Ukraine*, the ECtHR pointed out the effectiveness of measures to prevent the risk of ill-treatment (Article 3): “not every risk of ill-treatment could entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge” [1, para 124].

On the other hand, in its judgement of September 1, 2016 in the case of *Mikhno v. Ukraine*, the ECtHR stated: “in the applicants’ view, the State’s responsibility was engaged ... on account of a failure to put in place an adequate general legal and regulatory framework for organising air shows and for inadequate planning and preparation of the air show in question” [3, para 126]. “In this relation, it is to be noted that in the aftermath of the accident a number of new regulatory acts were passed domestically with a view to improving relevant safety standards. ... where the State is required to take positive measures the choice of means is in principle a matter that falls within the Contracting State’s margin of appreciation” [3, para 127]. Such an approach does not contribute to the future prevention of human rights violations: this judgement did not recognize the state to be guilty in violating its substantive positive obligations. And it means lack of adequate general legal and regulatory framework for organizing air shows and for air show planning and preparation. Consequently, the state is not obliged to establish strict rules for preparing and holding an airshow, thereby preventing the violation of the right to life (Article 2 of the Convention). In this case, the ECtHR has not sufficiently realized its preventive potential.

7. Subsidiarity.

The European Court of Human Rights, like almost native courts, implements all the preventive roles but as a subsidiary body in case if national courts fail to prevent a violation of human rights adequately.

Conclusions.

Thus, one of the key goals of the existence and functioning of the European Court of Human Rights as a quasi-judicial institution of a regional

system for the protection of human rights is to prevent the violation of human rights. On the effectiveness of the realization of this goal depends further progress of humanity in the gradual reduction of human rights violations.

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