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BOGACHENCO A. A.

National University «Odesa Law Academy»,
Post-Graduate Student of the Department of Administrative and Financial Law

THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE ESTABLISHMENT OF THE INSTITUTE OF PROCESSUAL RIGHTS ABUSE IN THE ADMINISTRATIVE PROCEEDINGS IN UKRAINE

The article is aimed at investigating the institution of abuse of rights in the practice of the European Court, as well as to carry out a comparative analysis of the theoretical aspects of the processual rights abuse and processual measures aimed at counteracting the abuse of processual rights in the fulfilment of justice in the European Court of Human Rights and the courts of administrative jurisdiction in Ukraine.

Key words: *abuse of processual rights, opposition to abuse of processual rights, administrative proceedings, measures of processual influence, Code of Administrative Proceedings of Ukraine, European Court of Human Rights.*

One of the shortcomings of the Code of Administrative Proceedings of Ukraine was the recent consolidation of the principle of inadmissibility of abuse of processual rights at the legislative level. The indicated negative phenomenon is characterized, above all, by the use by a person of rights granted to it by the processual law for a purpose other than that provided by the law, which leads to impediment to the proper adjudgement.

In the study, N. Chechina noted that the good faith behaviour of each party in the process ensures the normal functioning of the court and all persons involved in the process, ascertaining the material (objective) truth in each case, and at the same time guarantees the possibility of carrying out the processual rights of the other party, ensures his interest in the prompt and proper consideration of cases [1, c. 10]. However, in the practice of administrative proceedings, the incidents concerning unfair behaviour of the participants in cases while implementing their processual rights and obligations are increasingly encountered.

Legislative consolidation of this principle of administrative proceedings gave rise to the possibility of developing legal mechanisms to combat this phenomenon. It should be noted that processual law does not contain a definition of «abuse of processual rights», however, the legislator in Art. 45 CAP of Ukraine has attempted to determine what actions, contrary to the task of administrative justice, the court, in the light of specific circumstances, may consider as processual rights abuse [2].

Unlike national processual law, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, since its adoption, contained several provisions on the prohibition of abuses of rights that are essentially different. Thus, in Art. 17 of the Convention, the prohibition of abuse of rights is that none of the provisions of this Convention can be construed as conferring any State, group or person the right to engage in any activity or to take any action aimed at the abolition of any rights and freedoms recognized by this Convention or their limitations to a greater extent than is provided for in the Convention [3]. The above norm is directed at the prohibition of abuse of rights affecting the fundamental rights and freedoms of others guaranteed by the Convention and more detailed in other articles of the Convention. Abuse of such rights is, in the vast majority, the subject of substantive complaints by the European Court of Human Rights.

With regard to unfair use of processual rights by the participants in the process and the consequences of such behaviour of individuals, the relevant provisions are enshrined in Art. 35 of the Convention, which regulates the conditions for the admissibility of complaints filed. In accordance with § 3 (a) of Art. 35 of the Convention, the court declares inadmissible any individual application filed under art. 34 if he considers that this application is, in particular, an abuse of the right to submit an application. At the same time, § 4 of this article provides that the Court may refuse any statement which it considers inappropriate under this Article at any stage of the proceedings [3].

According to the position of the European Court of Human Rights, as set out, for example, in *Miroļubovs and Others v. Latvia* (§§ 62 and 65), "abusing" means any conduct by the applicant that is clearly not in accordance with the purpose of the Convention's guaranteed right of recourse, violates the established procedure of the Court, or complicates the proper conduct of the trial in court. The Court emphasized that the rejection of the complaint as a result of abuse of the right to filing it was an exclusive measure [4].

The content of the Convention itself does not contain a complete list of actions that the Court may consider to be an abuse of processual rights, but

an analysis of processual grounds for the inadmissibility of complaints under this criterion and the allocation of similar categories of cases in which the Court found abuse of the right to file a complaint made in the Practice Guide on Admissibility Criteria, developed on the basis of case law of the European Court of Human Rights. Up to five main categories of such cases have been classified, in particular:

- misinformation of the Court, which may consist, for example, in deliberate distortion of facts in order to mislead the Court (Varbanov v. Bulgaria), filing a complaint on behalf of another person (Case Drijfhout v. the Netherlands), forgery of documents sent to the Court (Jian case v. Romania, Bagheri and Maliki v. the Netherlands, Poznanski and others v. Germany);
- use of abusive vocabulary, provocative expressions or threats (Reh? k v. the Czech Republic, Durringer and Grunze v. France, Guntis Apinis v. Latvia);
- violation of the duty to maintain the confidentiality of the content of the negotiations concerning the settlement of the dispute (Hadrabov and others v. the Czech Republic, Popov v. the Moldavian Republic);
- filing a complaint without any serious reason or with intentional intentions (Migliore et al., Italy, Simitzi-Papachristou, etc. v. Greece);
- other cases, the exhaustive list of which is absent [5].

The research of the practice of the European Court of Human Rights shows that other cases that were considered by the Court as an abuse of the right to file a complaint and, as a result, the complaint was declared inadmissible, was, for example, a violation of the applicant's obligation to maintain his appeal during the whole trial. Thus, if the applicant (or his representative) fails to respond within reasonable time to the requests of the Secretariat, does not provide new information about the movement of his case in internal procedures or provides false information, such behavior, according to the Court, may indicate abuse of the right to appeal to the Court [6]. Abuse of the right to file a complaint may also be deemed to be cases where the applicant manages the desire to gain popularity, advertising or promotional effect (in which case the complaint is not automatically rejected due to abuse, but abuse can be established by the Court (McFeeley and Others v. The United Kingdom (Commission decision) , Khadjaliyev and others v. Russia, Parti travailliste Orgien v. Georgia) [5].

It should be noted that views on the definition of the essence of the phenomenon, such as the abuse of processual rights and its negative impact on the quality of the administration of justice, set forth by domestic scholars, in most cases coincide with the interpretation of this concept in the practice of the European Court of Human Rights, however this is different in determining the actions of participants in the process, which are regarded as abusing processual rights.

An analysis of the practice of the European Court of Human Rights shows that the list of actions that the Court regards as abuse of the right to file a complaint is much broader than that provided in Art. 45 CAP Ukraine list, and even covers that behaviour that is not directly aimed at violating the order of

the Court or obstructing the consideration of the case in court. At the same time, when the facts of abuse of rights are stated in the European Court of Human Rights, it is also necessary to take into account the objectives pursued by the applicant when filing her.

The most common consequence of the detection of abuse of procedural rights under the provisions of the Convention is the announcement by the European Court of Human Rights of the complaint of inadmissibility.

Similar to the content of the measure to counter such a phenomenon can also be used by national courts in the administration of administrative proceedings. So, according to Art. 45 CAP of Ukraine, in case of revealing facts of abuse of processual rights, courts of administrative jurisdiction are entitled to leave without consideration or to return a complaint, a statement, a petition. In addition, the legislator granted the courts of administrative jurisdiction in Ukraine to impose a fine for abusing processual rights, committing acts or assuming inactivity in order to interfere with legal proceedings.

However, the announcement of a complaint as inadmissible is not the only measure of influence on the participants in the case of the European Court of Human Rights. An example of the Court's use of other measures is the adoption of decisions prohibiting representatives (lawyers) from representing the interests of the applicants, in particular, such a case is the prohibition of Ukrainian lawyer Tselovalnichenko N. E. to represent the interests of the applicants in a case before the European Court of Human Rights in connection with the provision of false information and abuse of the right to petition the Court [7]. Such cases are not uncommon. A similar precedent was the deprivation of this right by Serbian lawyer Mikhail Petrovich in 2010, after he filed with the ECtHR more than 500 lawsuits, «most of which were extremely dubious» [8].

In our opinion, giving the court the opportunity to prevent representatives who grossly abuse processual rights from participating in a particular case, as well as the right to send reports to the High Qualifications-Disciplinary Commission of reports of misuse by lawyers during the trial and the consequences to which these actions resulted advocates for solving the issue of bringing to disciplinary responsibility, will promote the discipline of representatives of the parties to the case, reduce the manifestations of the negative phenomenon. We believe that the introduction of such a measure to counteract the abuse of processual rights will have a positive effect on the process of administering justice in Ukraine, will contribute to a better and more efficient administration of justice.

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DEMENCHUK M. O.

National University «Odesa Law Academy»,
Assistant Professor at the Department of Judiciary, Law
Enforcement Agencies and Advocacy, PhD in Law

ON THE INFLUENCE OF THE ECHR'S DECISIONS ON UKRAINE'S JUDICIAL PRACTICE

The article researches general provision on the ECHR activity, its influence on the judicial system and judicial practice of Ukraine.

Key words: *judicial practice, Supreme Court, unity of judicial practice, Convention, European Court of Human Rights.*

The European Court of Human Rights is the international court, created in 1959, which considers applications from persons, nongovernmental organization, group of individuals or from the state about violation of the European Convention on Human Rights.

Unfortunately, Ukraine play a leading role in the number of complaints made to this Court. In 2018 number of complaints was 12,9% from the general amount of complaints, in 2017 – 12,9%, in 2016 – 22,8 % [1]. Mostly citizens apply because of the violation of the Art. 6 "Right to a fair trial" of the Convention.

Ukraine ratified this Convention in 1997, and therefore the Court's decisions have binding nature. This provision is enshrined in the Law of Ukraine «On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights» dated February 23, 2006. Problems related to the implementation of these decisions require a separate study.