functioning of not only legal norms, but also moral ones. Despite the legislative settlement of the issue of protecting the right to respect for the honor and dignity of an individual from his violation by disseminating inaccurate information, in judicial practice, the results of linguistic examination are of great significance, taking into account the peculiarities of modern methods of creating information and the complexity of determining its forms.

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INAPPROPRIATE USE OF THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW IN UKRAINE'S LITIGATION

Key words: *European Court of Human Rights, litigation, human rights, inappropriate use.*

Ukrainian human rights activists, like Ukraine as a whole, are very proud of the ratified Convention for the Protection of Human Rights and Fundamental Freedoms [1], and the blessed opportunity to use the practice of the ECHR in order to strengthen the legal argument in litigation.

Historically, the practice of the European Court of Human Rights in Ukraine has been a way of completely ignoring and ridiculous rejection of the brand's fashion, when it is not wary of the conclusions of the ECHR on all legal issues in a row.

The irrelevant use of the decisions of the European Court of Human Rights has been interestingly spoken by two well-known lawyers of the ECHR Secretariat and the Supreme Court in a joint publication on a related topic [2]. According to the Head of the Department of the Execution of Decisions of the European Court of Human Rights of the Directorate General for Human Rights and Rule of Law of the Council of Europe Pavlo Pushkar and the Head of the Department of Analytical and Legal Work of the Supreme Court, Rasim Babanli: "It is sometimes inappropriate to apply the practice of the ECHR to the use of citations from decisions made by the Court in fundamentally different circumstances or which justify other legal conclusions reached by the Court. Often you can see the reference to the ECHR ruling without the context of the very norm of the Convention to be applied, or without the actual context of the decision. The arbitrary treatment of such quotations, which sometimes does not reflect the very legal position of the ECHR, enshrined in the case, often takes place without even being familiarized with the full text of the ECHR judgment. Such application of the practice of the ECHR can lead to the fact that a certain legal problem, albeit as it is solved in accordance with generally accepted standards of practice of the ECHR, does not in fact take into account the completely opposite situation".

I will add some practical examples of the inappropriate reference to the practice of the ECHR, one of which is reflected in the ruling of the Supreme Court dated February 12, 2019 in the case No. 159/451/16-к [5], and the other is often used by defenders in postponing the trial [3].

In this criminal case, the defenders of the convicted persons substantiated the mandatory existence of a written confirmation of the voluntary consent of the owner to review his possession. By the judgment of the European Court of Human Rights in the case of Kucher v. Slovakia dated July 17, 2007 [4].

According to the tradition of the updated Supreme Court, a thorough and profound analysis of the legal position was carried out, which resulted in the refutation of the arguments regarding the relevance of the findings of the ECHR in relation to the actual circumstances of the case.

Pursuant to paragraphs 34, 44 of the decision of the Supreme Court by the panel of judges of the First Chamber of the Court of Cassation Criminal Court, consisting of A.P. Bushchenko, S.S. Holubytskyi and I.V. Hryhorieva the following is set.

"The defense party in the cassation appeal and the objections to the prosecutor's request to refer the case to the Grand Chamber insist that written confirmation of consent to the review of housing or other possession of the person is mandatory. They refer, inter alia, to the conclusion of the ECHR in the judgment of the Kucher v. Slovakiia case dated July 17, 2007, apparently bearing in mind the following passage: "The risk of abuse of power and violation of human dignity is inherent in a situation such as this one, when ... the applicant at dawn at the door of his home faced numerous

police special forces in masks. In the Court's view, safeguards should be in place to prevent abuse in such circumstances and to ensure the effective protection of the rights of individuals under article 8 of the Convention. Such safeguards could include the adoption of legislation that would restrict the use of special units in a situation where ordinary police measures cannot be considered safe and sufficient and, in addition, would provide procedural safeguards, for example, ensuring the presence of an independent person during an operation or obtaining a clear, written consent from the owner as a prerequisite for penetration into his home". The reference of the defense counsel to the ECHR's judgment in Kucher v. Slovakiia is irrelevant in the circumstances of the case. The Court notes that, in the context of the Kucher v. Slovakiia case, written consent was mentioned only as one of the possible ways of ensuring the right to inviolability of housing in a situation where a person is compelled to make a decision when faced with the doors of his home with numerous armed masked law enforcers. There is no doubt that this situation differs sharply from the situation when the person himself calls the law-enforcers to investigate the crime committed against her" [5].

In my opinion, the situation looks even more interesting with reference to other conclusions of the ECHR, with which we colleagues personally encounter in criminal cases, where we represent the interests of victims.

Over the last six months, the popularity of one of the decisions of the European Court of Human Rights, which on Ukrainian resources exists only in the translation of a press release and with a strange mischief interpretation, is gaining momentum.

This is the case of "Bartaia v. Georgia" [5]. With the help of the conclusions of the ECHR, set forth in it, With the help of the conclusions of the ECHR, set forth in it, Ukrainian attorneys' advocates substantiate their own non-appearance in the court session by the right to a fair trial under Art. 6 of the Convention. Ukrainian attorneys' advocates substantiate their own non-appearance in the court session by the right to a fair trial under Art. 6 of the Convention. But the dissatisfaction of the courts with the petition for the postponement and continuation of the proceedings consider an attack on the sanctity of justice. After all, according to information disseminated on the Internet and among colleagues-lawyers, the ECHR justified and named a valid reason for the absence of a lawyer in a court session through participation in another process. It is necessary to understand that when forming practice, the court relies on the specific circumstances of the case, the details of which are decisive. It would seem, in almost identical circumstances that the ECHR can make diametrically opposed decisions, and this is not the fad of the court, but the proper and just weighing of all the arguments. The ECHR's decision, adopted by Bartai, concerned the civil case of a typographer, where the court found that the Convention had violated the human rights and fundamental freedoms by means of a decision against the applicant in the absence of a lawyer. The circumstances of the case are quite special, because the court sentenced: (1) the decision of the correspondence; (2) in fact (3) in one trial (4) against the absent party without his lawyer (5), preventing the further possibility of challenging the decision as part-time, precisely because of the

recognition of the disrespect for the non-appearance of the applicant and his representative.

As a rule, lawyers refer to this decision, even without having an arsenal of the same circumstances under which it was pronounced against Georgia. For example, in a well-known criminal case following the events of a shootout in the village of Kniazhychi, where during the special operation of law enforcement officers of the National Police units killed their own colleagues from the State Service of Guard, lawyers accused of delaying the commencement of the case use the decision "Bartai v. Georgia" [3]. However, the position of the ECHR is not worded in any way by the full legality and unconditional respect of the absence of a lawyer in one proceeding because of employment in another, as well as the advancement of the protection of one client to another. The European Court of Human Rights has noted the insufficient motivation of the national court in resolving a civil dispute with the applicant in vain without the latter's right to legal assistance and limiting the further appeal of such a decision as absenteeism due to the recognition of disrespectful reasons for the absence of a lawyer.

Moreover, the ECHR, among other things, concluded that such a non-transparent hint is to consider the actions of a lawyer to ignore the trial due to another meeting, which is unfair, which is why the client has every reason to appeal to a court against his representative. Consequently, the ECHR decision not only awarded the applicant compensation from the state, but also provided the legal basis for the recovery of damage from lawyers through unfair/negligent actions.

Thus, in accordance with paragraph 37 of the ECHR judgment, the Court notes that from the very beginning and throughout the proceedings, the applicant was duly represented by a lawyer of his own choosing. This lawyer was responsible, in particular, for the notification of the applicant about the relevant legal procedures and the nuances of his case. In the Court's opinion, since the failure to respond to the request for postponement of the case on January 22, 2004 could mean the silent rejection of the petition by the district court, the lawyer should have taken all necessary measures and advised the applicant on all possible legal strategies, including the legal steps that he was required to take in the absence of a representative during the scheduled hearing (see, with the corresponding changes, Hermi v. Italy [GC], No. 18114/02, § 79, ECHR 2006-XII) [5].

Therefore, defenders should be cautious with the widespread use of the European Court of Human Rights judgments in their own practice, because the vain and inadvertent reference may not only seem unprofessional, but also turn against the lawyers themselves because of the ignorance of the nuances of the case and the superficial familiarity with the Court's findings.

Again, quoting the lawyers of the ECHR and the Supreme Court of Ukraine in the article entitled "On the question of (non) relevant application of the European Court of Human Rights practice: practical advice", I note that "in order to avoid relevant inadequate manifestations of the incorrect application of the practice of the ECHR as a source of law, it is appropriate to pay attention, in particular, to such. First, on the similarity of the actual

circumstances of specific cases. In order to properly apply the legal position of the ECHR, it is imperative to investigate the facts in which the ECHR has been formulated. Of course, it may not be about absolutely identical "twin circumstances" or ideal similarities, but the relevant circumstances should have a fundamental similarity and have no fundamental differences and differences with the facts of a particular case" [2].

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ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CONTEXT OF ECHR CASE LAW

Key words: *European Court of Human Rights, electronic evidence, evolution of evidence.*

The institute of evidence is justly regarded as the fundamental basis of court proceedings. The European Court of Human Rights (hereinafter – ECHR), using the traditions and peculiarities of the general continental law,