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UN CONVENTIONAL BODIES AS ALTERNATIVE TO THE EUROPEAN COURT OF HUMAN RIGHTS: PRO ET CONTRA

Thesis reflected the practical specialties, drawbacks and benefits of the implementing the conventional committees, established in the framework of the UN universal treaties for defending rights of criminal proceedings` participants. Author pointed on the reasons of the relatively low usage those mechanisms in the Ukrainian legal practice, lighted the ways of their execution for a huge procedural perspective.

Key words: *conventional committees, criminal proceeding, individual application, new established circumstances, universal treaties.*

Now practically nobody of Ukrainian lawyers working with the criminal law will not be surprised for usage the practice of the European Court of Human Rights (ECtHR) also as for applying to ECtHR on situations in the certain criminal proceedings. At the same time wide set of tools and possibilities for implementing the UN conventional mechanisms to the criminal proceeding did not got a wide development in Ukraine.

Now Ukraine is a full member of majority of the universal human rights treaties and relevant optional protocols that grant to individuals and groups right to apply statements (communications or applications) about violating their rights, guaranteed by the relevant convention, to the specially established bodies such as Human Rights Committee (CCPR), Committee against Torture (CAT), Committee on Enforced Disappearances (CED), Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of the Child (CRC), Committee on the Rights of Persons with Disabilities (CRPD). Only two UN bodies – Committee on Economic, Social and Cultural Rights (CESCR) and Committee on Migrant Workers (CMW) have no mandate to elaborate and research the communications against Ukraine.

Those committees are located in Geneva, their activities are under common auspice of the UN Office of the High Commissioner for Human Rights (OHCHR). As committees so their members, appointed regarding member States` proposals, act in compliance with the relevant convention (covenant), with own rules of procedure and, in certain volume, with own previous decisions (views) in individual cases and common statements for interpretation and explanation the conventional norms.

Sending individual communication to the relevant conventional committee must be done after exhausting by the victim the effective national legal remedies, available in a reasonable terms. The communications must be signed, grounded and supported by the written evidences, they may not be transferred to some international bodies in the same time; victim must not abuse his right on communication with the committee and pass such appeal in the limited term after national remedies exhausting (various committees established it in 6 months or in one year).

All committees use the literal proceeding and use one of three UN working languages (English predominantly), but passing the communications and attached documents` copied (or their translations) may be done on any of UN official languages, including Russian. First communication with committee in case must be done by the regular post but in started proceedings committees use actively the emails connecting them with victims. The approximate examples (drafts) of the communications and addresses of any UN conventional committee, all relevant to its work documents are available in the committee web-page on the UN web-site. Above mentioned simplifies the awareness and possibility for Ukrainian lawyers to use the conventional committees` mechanisms.

Alas, if the quantity of applications sent annually against Ukraine to the ECtHR are calculated in thousands – less than a hundred of communication are sent against Ukraine to all UN committees for the last two decades; it may

be explained by some reasons. First, the Ukrainian legislation does not foresee the special character of usage the remedies, established in the decisions of the conventional bodies, that is not in compliance with the special order of execution the ECtHR decisions, prescribed by the Ukrainian Law on 23rd of February, 2006 № 3477-IV, governmental decrees on 31st of May, 2006 № 784 and on 7th of March 2007 № 408.

At the same time regarding the common international obligations of Ukraine, including the art. 26 of Vienna Convention on the Law of Treaties, 1969, any debts and obligations established by the decisions of the conventional committees are obligatory for relevant states in the framework of the conscientious execution of own treaty obligations. More, in compliance with the part 5 of art 55 of Ukrainian Constitution anybody have the right, after usage the national tools of legal remedies, to appeal on defense own rights and freedoms on only to the «relevant international courts» but to the «relevant bodies of the international organization where Ukraine is a member State or a participant State»; UN conventional committees are certainly such kind of bodies. More, act of the conventional committee, establishing the violation the human rights, guaranteed by the relevant covenant (convention), must be executed by Ukraine in the framework of compensation the damage done by acts, decisions and inactivity of the power bodies and their representatives (art. 56 of Ukrainian Constitution).

Secondary, Ukrainian legislation did not establish the special criminal procedural order of revision the court decisions after adopting the conventional committee act. As, regarding to the p. 2 of part 3 of art. 459 of the Criminal Procedural Code, if Ukraine only violation by Ukraine own international obligations, established by the international court body, solving this case, is the exclusive circumstances obliging the Great Chamber of the Supreme Court to review the case; conventional committees are not the international court bodies. But decisions of the ECtHR as of a body certainly covered by this Code`s provision, also not often cause the review the case by the Supreme Court, and such Great Chamber decisions are not always for the applicant`s merits. But other forms of usage the ECtHR decisions and conventional committees acts in the Ukrainian national criminal proceedings are very similar, especially in cases where the reasonable terms conditions are violated and national procedures are ingoing.

Such execution the committee decision may go by different ways: as a prove in proceeding, as material or ground for the application or cassation in usual way, as a ground for withdrawal to or initiating the disciplinary proceeding for judges or prosecutors acted in this case before the committee decision. If the terms for appellation or cassation the final court decision are exhausted the committee act may be used as a ground for the procedure reflected in p. 4 of part 2, art. 459 of the Criminal Procedural Code – as a new established circumstances. Regarding part 1 of art. 463 of the Criminal Procedural Code application on the review of relevant court decision must be given not to the Great Chamber of the Supreme Court but – via the court that violated by the decision, being in force, conventional human rights in this case, researched by the committee.

Usage the conventional committees is well-grounded as against the state that are not members of the Council of Europe (such as Belarus or Kazakhstan), or in cases where the volume of rights defended by the relevant UN treaty is much more wide, comparing with the Convention, 1950 and Protocols to it. Art. 10 of the International Covenant on Civil and Political Rights, guaranteeing the prisoners' rights, may be the easiest example of such situation. And more often the ECtHR refuses to research the individual application, or does not give any answer for passed application in a reasonable time, and the violations of the applicant's rights by state are ongoing.

Other preference of the UN committees is in the modern extreme congestion of the ECtHR, elaborating more than 56 thousands of cases for the end of 2018. Such congestion cause the brutal simplifying by ECtHR the nature of cases, arbitrarily related by the Court's Registry to group of certain «model cases» or «well –established cases», the adjournment of consideration of the principal and complicate cases for years and even decades. In this situation UN conventional committees are strongly tied by own Rules of Procedures in terms of considerations and communications on the individual communications and are able to execute such terms – as the number of cases in committees are extremely low. For example in 2018 UN Human Rights Committee got 189 individual communications and no one against Ukraine among them (comparing with 5 communications against Nederland, 9 against Spain and 15 against Russia). So this issue may be a fruitful ground not only for scientific researches but also for practical achievements.

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FREEDOM OF CREATIVITY AND RESTRICTIONS THEREON IN THE EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS

Key words: *creativity, restrictions thereon, freedom of creativity, European Court, human rights.*

The right of citizens to freedom of literary, artistic, scientific and technical creativity, freedom of thought and speech, as well as free expression of their views and convictions is guaranteed by the Constitution of Ukraine.

The freedom of creativity allows a subject of law to act in accordance with their internal convictions, which may differ from the generally accepted requirements, including those, which have been legally established. However, where an individual seeks public, in particular, state appraisal of his/her activity, he/she must correlate his/her behavior with the generally accepted model of conduct [1, p. 17].

The freedom of creativity can be divided into several types taking into account the phased character of creative activity. The freedom to create a