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**THE CONCEPT OF THE STANDARD OF PROOF «REASONABLE SUSPICION»
IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS**

The article is devoted to the research of the legal concepts of the European Court of Human Rights regarding the interpretation of the concept of a standard of proof «reasonable suspicion».

Key words: *standard of proof, reasonable suspicion, European Court of Human Rights.*

Indicating the importance of adherence to the standard of proof «reasonable suspicion» in the practice of national courts, the ECHR widely uses it when establishing compliance of their decisions to article 5 § 1 (c) and part 3 of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The first specified standard of the ECHR was used in the judgment from 30.08.1990 in the case of Fox, Campbell and Hartley v. the United Kingdom, in § 32 of which the Court noted that the «reasonableness» of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in article 5 § 1 (c) [1]. Subsequently, the ECHR drew attention to the importance of this standard in criminal proceedings in a number of judgments, indicating that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention (§ 153 of the judgment from 06.04.2000 in the case of Labita v. Italy, § 73 of the judgment from 01.06.2006 in the case of Mamedova v. Russia and others) [2; 3]. With this guarantee, as noted the ECHR in § 48 of the judgment from 13.11.2007 in the case of Cebotari v. Moldova and in § 175 of the judgment from 21.04.2011 in the case of Nechiporuk and Yonkalo v. Ukraine, it follows that in the absence of a reasonable suspicion arrest or detention of an individual must never be imposed for the purpose of making him confess or testify against others or to elicit facts or information which may serve to ground a reasonable suspicion against him [4; 5].

The widespread application of the standard of proof «reasonable suspicion» in the practice of the ECHR has led to the formation of a number of criteria that indicate an understanding of its concept.

Turning to the definition of the concept of a standard of proof «reasonable suspicion», the ECHR initially focused on its factual side. So, giving a definition of its concept for the first time, the Court in § 32 of the judgment from 30.08.1990 in the case of Fox, Campbell and Hartley v. the United Kingdom agrees with the Commission and the Government that having a «reasonable suspicion» presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence [1]. This definition has been repeatedly used by

the Court in other cases, in which the applicants indicated a violation by national courts in the course of criminal proceedings of article 5 § 1 (c) and/or part 3 of article 5 of the Convention (in particular, § 155 of the judgment from 06.04.2000 in the case of *Labita v. Italy*, § 108 of the judgment from 19.10.2000 in the case of *Włoch v. Poland and others*) [2; 6].

Over time, the ECHR, following the definition of the concept of the standard of proof «reasonable suspicion», given in § 32 of the judgment from 30.08.1990 in the case of *Fox, Campbell and Hartley v. the United Kingdom*, along with its factual side, additionally drew attention to the its legal side. So, in § 109 of the judgment from 19.10.2000 in the case of *Włoch v. Poland* ECHR has indicated that in addition to its factual side, the existence of a «reasonable suspicion» within the meaning of Article 5 § 1 (c) requires that the facts relied on can be reasonably considered as falling under one of the sections describing criminal behaviour in the Criminal Code. Thus, there could clearly not be a «reasonable suspicion» if the acts or facts held against a detained person did not constitute a crime at the time when they occurred [6].

In its practice, the ECHR drew attention to the close relationship and the interdependence between the reasonableness of the suspicion and the circumstances of the criminal proceedings. So, in § 32 of the judgment from 30.08.1990 in the case of *Fox, Campbell and Hartley v. the United Kingdom* the Court noted that what may be regarded as «reasonable» will however depend upon all the circumstances [1]. Thus, the ECHR has noted the need to establish the existence of a reasonable suspicion in every criminal proceeding, taking into account all its circumstances, in particular those indicating about the possible guilt of a person in committing a criminal offense.

In accordance with the established practice of the ECHR, the conclusions about the existence of reasonable suspicion set out in judgments of national courts should be based on the evidence provided by the prosecution party and sufficient in their combination to detain a person or take into custody. So, the ECHR indicates that article 5 § 1 (c) does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicants were in custody (§ 53 of the judgment from 29.11.1988 in the case of *Brogan and Others v. the United Kingdom*, § 55 of the judgment from 28.10.1994 in the case of *Murray v. the United Kingdom and others*) [7; 8], because in the presence of such evidences the police would, it can be assumed, have laid charges and the applicants would have been brought before the competent legal authority (§ 53 of the judgment from 29.11.1988 in the case of *Brogan and Others v. the United Kingdom*) [7]. In this regard, the ECHR came to the conclusion that facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge which comes at the next stage of the process of criminal investigation (§ 55 of the judgment from 28.10.1994 in the case of *Murray v. the United Kingdom*, § 36 of the judgment from 16.10.2001 in the case of *O'Hara v. the United Kingdom*) [8; 9]. At the same time, the ECHR recognized that neither is it necessary that the person detained should ultimately have been charged or brought before a court (§ 48

of the judgment from 13.11.2007 in the case of Cebotari v. Moldova) [4], and the fact that an applicant has not been charged or brought before a court does not necessarily mean that the purpose of his detention was not in accordance with Article 5 § 1 (c) (§ 155 of the judgment from 06.04.2000 in the case of Labita v. Italy) [2].

From the position of the ECHR, a reasonable suspicion in no case can be based on the subjective assumptions of the subjects of proof regarding the committing of a criminal offense. So, focusing on the factual side of reasonable suspicion, the ECHR in § 48 of the judgment from 13.11.2007 in the case of Cebotari v. Moldova noted that the fact that a suspicion is held in good faith is insufficient [4]. As scientist indicates, the assumption, even in good faith, is not a sufficient justification of suspicion, neither is a general negative personality characteristic [10, p. 122], in this regard the restriction of the right to liberty and personal security can only take place if there is a reasonable suspicion and a subjective conviction (*bona fide*) only is not enough [11].

Thus, the concept of the standard of proof «reasonable suspicion» in the practice of the ECHR is characterized by the following aspects: 1) a reasonable suspicion involves the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the act falling under signs of a criminal offense, the responsibility for which at the time of its commission was established by the norms of the Criminal Code; 2) a reasonable suspicion must be based on all the circumstances of the criminal proceedings established at the time of the detention, remand in custody or extension of the period of detention, and on the evidence is which provided by the prosecution party and sufficient in their aggregate to make appropriate judgment, and can not be based on assumptions.

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**DEVELOPMENT OF THE CASE-LAW OF THE EUROPEAN COURT
OF HUMAN RIGHTS CONCERNING THE RIGHT
TO EXAMINE ATTESTING WITNESSES**

Key words: *European Court of Human Rights, case-law, attesting witnesses.*

Late 2018 and early 2019 saw interesting developments in the case-law of the European Court of Human Rights under Article 6 § 3 (d) (right to examine witnesses) of the European Convention on Human Rights. The interest of these developments for Ukraine is that the Court has finally taken a position on the special status of «attesting witnesses», the term which in the Court's terminology translates the Ukrainian term «поняті». This special status is a special feature of the Ukrainian legal system and it is interesting to see how this particularity is now reflected in the Court's case-law.

In Ukrainian criminal procedure the function of attesting witnesses is to observe certain investigative actions and to certify that the records of those actions accurately reflect what actually happened. Article 223 of the 2012 Code of Criminal Procedure requires the investigator to invite at least two uninterested people as attesting witnesses to observe such investigative actions as search, identification parade and reconstruction. By contrast, the status of other witnesses, which can be called «material» witnesses, is regulated in separate provisions, in particular Articles 95-96 of the Code.

The old 1964 Code of Criminal Procedure contained analogous provisions. Similar rules also exist in Russian criminal procedure.

The question this presented for the European Court of Human Rights was whether and how to apply the guarantees of Article 6 § 3 (d) to attesting witnesses, taking into account their specific status.

The fact that domestic law used a totally different term, «понятий» as opposed to the literal term for witness, «свидок», is not a problem in itself: the Court has long held that the term «witness» used in Article 6 § 3 (d) has an autonomous meaning which is not necessarily dependent on the domestic legal classification (*Asch v. Austria*, 26 April 1991, § 25, Series A no. 203). For example, the Court has no problem classifying experts as witnesses (for