

CHYSTIAKOVA Y. V.

National University «Odesa Law Academy»,
Associate Professor of the Department of International and European Law,
PhD in Law

**THE USE OF INTERIM MEASURES OF THE EUROPEAN COURT
OF HUMAN RIGHTS BY UKRAINE AND AGAINST UKRAINE**

Key words: *European Court of Human Rights, Convention, interim measures.*

The procedure of individual applications to the European Court of Human Rights (ECHR) under the article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) has granted a possibility for private persons to protect their rights on international level. Among the most critical issues of the ECHR work is length of procedure. It will take long period of time since the launch of application till the final judgement. The interim measures is the mechanism worked out by the ECHR for prevention damage for the applicant in urgent situations. Those measures are prescribed by article 39 of the Rules of Court.

Although interim measures are provided for only in the Rules of Court and not in the Convention, States Parties are under an obligation to comply with them. Grand Chamber judgments have given the Court an opportunity to clarify this obligation, based particularly on Article 34 of the Convention [1]. As example, in *Mamatkulov and Askarov v. Turkey* judgment the Grand Chamber of the Court for the first time concluded that, by failing to comply with interim measures indicated under Rule 39 of the Rules of Court, a State Party had failed to comply with its obligations under Article 34 of the Convention. The Court noted in particular that, under the Convention system, interim measures, as they had consistently been applied in practice, played a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in those conditions, a failure by a State which had ratified the Convention to comply with interim measures would undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms in the Convention.

The ECHR may, under Rule 39, indicate interim measures to any State party to the European Convention. Interim measures are urgent measures which, according to the Court's well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question. In the majority of cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk

of serious and irreversible harm. For instance, according to the official statistics during 2018 there were 58 Rule 39 requests against Ukraine and only 4 of them were granted (49 and 5 in 2017, 31 and 6 in 2016 accordingly) [2]. Separate type of application of the interim measures pursuant to Rule 39 of the Rules of Court is an application against two states – Ukraine and Russia. The court does not provide any explanation as to the substance of the applications filed against two countries (there are only official statistics), but we can suggest that the statements concerned the military conflict in the East of Ukraine and the annexation of the Crimea, in particular, the rights of those who were captured captive [3].

In the Court's case-law as it currently stands, Rule 39 of the Rules of Court is not applied, for example, the following cases: to prevent the imminent demolition of property, imminent insolvency, or the enforcement of an obligation to do military service; to obtain the release of an applicant who is in prison pending the Court's decision as to the fairness of the proceedings; to ensure the holding of a referendum; or to prevent the dissolution of a political party [1].

Unlike the application to the ECHR, the special form is not available for the petition of interim measures. It can be made in an arbitrary form, indicating the articles of the Convention which, in the opinion of the applicant, will be violated in the absence of such provisional measures, and the justification that the applicant faces a real risk of serious and inevitable harm if the corresponding interim measure is not applied, and providing relevant evidence. In the case of a request for medical measures, such evidence is the appropriate medical documentation on the health of the person and the conclusions of the doctors on the need for special medical treatment or treatment in specialized medical institutions. Regarding requests for suspension of expulsion or extradition, reports from international human rights organizations indicating the threat of death or ill-treatment of the applicant in the country of extradition are provided. In addition, a petition for the application of interim measures is also accompanied by judicial decisions, correspondence with the relevant authorities as evidence of the applicant's use of all effective domestic remedies. The petition for the application of interim measures may be filed both together with the main statement of the alleged violations, and separately. In the case of a separate application for interim measures, the Court will indicate in its letter the date on which such a statement should be sent. If these requirements are not met, the ECtHR will not consider it [4].

The majority of interim measures undertaken against Ukraine concerned the problem of health and conditions of detention. As example, case of *Pivovarnik v. Ukraine* within which Ukraine failed to follow the request of the Court. On 19 June 2015 the acting President of the Section, upon the applicant's request under Rule 39 decided to indicate to the Government that they should present the applicant urgently for medical examination by a specialised doctor of the City Hospital; secure for the applicant immediately, by appropriate means, treatment to his state of health; and inform the Court about the applicant's state of health and the measures undertaken. From

6 until 9 July 2015 the applicant underwent an in-patient examination at the City Hospital in the course of which a number of blood tests and an ultrasound examination were conducted and the applicant was examined by a number of specialists. The hospital issued an opinion according to which the applicant was suffering from chronic HCV «in an inactive phase» and liver impairment. He was prescribed hepatoprotectors. On 14 July 2015 the Government informed the Court about the applicant's examination at the City Hospital. But on 19 August 2015 the applicant complained to the Court that the recommendations of the City Hospital doctors were not being followed. The Court invited the Government to comment on those allegations. Only on 1 September 2015 the applicant started to be treated with hepatoprotector medicine.

In final judgement the Court noted that the prison authorities failed to comply with the interim measure from 9 July to 1 September 2015. The purpose of the interim measure indicated by the Court, as is apparent from its very wording, was to ensure that the applicant received appropriate medical assistance in detention while his case was pending before the Court. However, this purpose could not be achieved since the prison authorities merely ensured the initial examination of the applicant and then, having provided a report to the Government Agent's office (and, through it, to the Court), apparently neglected to follow up on any of the medical recommendations made following that examination without providing any justification for this omission. Such conduct on the part of the prison authorities undermined the effective operation of the interim measure indicated by the Court since it required the Court to continue to intervene to make sure that the respondent State continued to comply with the measure even after they had reported to the Court that the measure has been complied with.

One of the most resonance interim measure taken against Ukraine concerned the order of the ECHR to Ukrainian government not to access any data from the cell phone of Radio Free Europe/Radio Liberty investigative reporter *Natalia Sedletska*. The ECHR pledged to consider her appeal as a "matter of priority". On August 27, Kyiv's Pechersk district court approved a request from the Prosecutor-General's Office to allow investigators to review all data from Sedletska's phone from 1 July 2016 through 30 November 2017. The ruling stems from a criminal investigation into the alleged disclosure of state secrets to journalists in 2017 by Artem Sytnyk, director of the National Anticorruption Bureau of Ukraine. The first interim restrictive measures in a journalist's complaint were made by the Court on 18 September 2018 and lasted for one month. On 16 October 2018, the European Court in accordance with Rule 39 of its Rulei extended the urgent interim protective measures in the case of a Sedletska. The Court has not set any time limit for a new measures. applications

The ECHR procedures cover not only individual applications but also inter-state applications. Under the article 33 of the Convention any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party. States may also actively use the mechanism provided for by Rule 39 of

the ECHR Rules. For example, ECHR grants interim measure in new inter-State case brought by Ukraine against Russia concerning events in the *Kerch Strait*. 4 December 2018 the Court decided to indicate to the Russian Government by way of interim measure that, in the interests of the parties and the proper conduct of the proceedings before it, they should ensure that appropriate medical treatment be administered to those captive Ukrainian naval personnel who required it, including in particular any who might have been wounded in the naval incident that took place in the Kerch Strait on 25 November 2018.

Summarizing all above, it should be stated, that Rule 39 of the Rules of Court provides the applicants with an instrument of urgent reaction of the Court on the violation of rights covered under the Convention. This tool might be used by individual applicants for immediate cease of violation by any Member State. As well it is very valuable mechanism in the procedure of inter-state applications. The interim measures were used both by Ukraine and against Ukraine, with the main purpose to avoid the breach of Convention.

References:

1. Interim measures [Electronic resource]. – Access mode: https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf
2. Rule 39 requests granted and refused in 2016, 2017 and 2018 by respondent state [Electronic resource]. – Access mode: https://www.echr.coe.int/Documents/Stats_art_39_01_ENG.pdf
3. Охотнікова Н. Чи потрібно Правило 39 українським адвокатам? [Electronic resource]. – Access mode: <http://khp.org/index.php?id=1508745859>
4. Лазаренко Е. Правило 39: дієвий механізм захисту та поновлення прав людини [Electronic resource]. – Access mode: <http://resonance.ua/pravilo-39-diieviy-mekhanizm-zakhistu-ta-p/>

BILOKUR YE. I.

National University «Odesa Law Academy»,
Associate Professor at the Department of Administrative and Financial Law,
PhD in Law

THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE PROVISION OF A SUIT IN ADMINISTRATIVE PROCEEDINGS

The article is devoted to the study of the practice of applying the recommendations of the European Court of Human Rights in the process of resolving administrative courts the issue of securing a suit in administrative legal proceedings. The provisions of the Code of Administrative Proceedings regarding the provision of a suit, as well as the decision of the ECtHR court in this regard,