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THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS A TOOL OF PROTECTION OF LEGAL PERSONS

The article is devoted to the recognition of The European Convention on Human Rights as a tool of protection of interests of legal entities in the European Court of Human Rights, as well as any other individual.

Key words: *European Court on Human Rights, legal persons, the right to a fair trial.*

Both domestic law and international law are increasingly coming to recognize corporations, other private non-natural persons and even public juristic entities as subjects of criminal liability. A significant question for theory and practice is whether such private or public legal entities can find direct protection under international fundamental human rights norms when criminal law and criminal procedure are being applied against them.

Moreover, if this is not the case, then a second issue merits attention *to* indirect protection of legal persons: is it possible for individual stakeholders in these entities – such as owners, shareholders, employees, and members – to invoke the protection of human rights when the violation is in fact directed against the organization in which they have an interest? The outcome of an assessment of these questions is not only relevant to legal person themselves, it has also consequences for the natural individual stakeholders of the entity, as well as for democratic society and the rule of law.

There is a growing awareness that legal persons are responsible for human rights violations in the world. This responsibility not only concerns gross, large-scale human rights violations by multinational companies in developing countries, it also includes all kinds of more or less separate breaches of human rights by all sorts of entities throughout the world. For example, a public legal entity seriously discriminates against ethnic or religious groups, a company uses slaves or produces inferior food products or medicines that cause people to die or become seriously ill, a newspaper violates individuals' right to privacy, a political party propagates hate speech, or an internet provider permits incitement to violence on sites it hosts.

The European Convention on Human Rights was a direct response to the grave human rights abuses during World War II. The Convention is a multilateral treaty signed in Rome on November 4, 1950. All forty-seven member States of the Council of Europe – thus including Ukraine – are parties to the Convention. The Convention's binding character is clearly stated in its first article which says that all member States of the Council of Europe shall secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. The difference between the Convention and other international human rights instruments (such as the International Covenant on Civil and Political Rights) is that the Convention confers a broad protection to corporations in addition to individuals.

Under Article 34 ECHR it is possible for corporations and other private legal persons to summit cases on their own behalf to the European Court of Human Rights (ECtHR). In order to be admissible in a complaint the plaintiff must qualify as a victim. This means that the legal person must be directly affected by the act or omission in issue. So the ECHR does not allow for that, although only Article 1 First Protocol ECHR on the right to property expressly recognizes legal persons as recipients of fundamental rights, several of the other human rights in the European Convention are granted to them as well. This also applies to rights that are relevant to criminal justice. That rights seem to refer to natural persons, since they include terms as "anyone has the right". The ECHR always intended to include corporate entities and other non-natural persons. Referring to its constant case law that the European Convention is a living instrument which must be interpreted in the light of present-day conditions, the European Court of Human Rights (ECtHR) even manages to expand the protection of legal persons, notably corporations, under the Convention.

This might also apply to private legal persons caught in the criminal justice system. Nevertheless, this still does not mean that corporations and suchlike entities enjoy exactly the same protection under the rights as are applicable to them as individuals. All the same, private legal persons do have standing under the European Convention and they can claim to be victim of the human rights relevant to them. This harmonizes fairly well with the aim of the Convention as presented in its preamble, which emphasizes the value of human rights for maintaining and developing the rule of law as well as peace, unity and justice in Europe, rather than that human rights require protection because their basis lies in ideals of humanity and the value of human beings and humankind. An additional argument for the European Court is that in many cases it is not possible to draw distinctions between professional and non-professional activities. Nevertheless, legal persons that are in fact principally criminal organizations might be excluded from the protection that non-criminal organizations enjoy under the Convention.

Meanwhile, governmental organizations may in principle not submit individual complaints to the European Court, nor do the rights and freedoms embodied in the European Convention and Protocols apply to them. It is, however, not always evident if a legal person should qualify as a governmental or non-governmental organization. In some cases legal entities that formally had to be considered as public legal persons (public law entities) were regarded as non-governmental organizations within the meaning of the Convention, because their objectives and powers were not such as to enable them to be classed with governmental organizations established for public-administration purposes. The European Court's jurisprudence reveals that public-law entities, such as governmental bodies or public corporations, can have the status of a non-governmental organization insofar as they do not exercise governmental powers, were not established for public-administration purposes and are completely independent of the State. Private legal persons, such as public companies that participate in the exercise of governmental powers or run a public service under government control will rank as governmental organizations. In common with normal public legal persons, such public companies cannot derive protection within the international supervisory system from the rights embodied in the European Convention.

Companies and other private legal persons charged with a criminal offence are subject to the protection of the right to a fair trial in Article 6 ECHR [1]. The extensive case law of the European Court does not seem to include a single case in which the ECtHR rejected a legal person's fair trial complaint because the claimant was a company or other private juridical entity[2]. What is more, when assessing a criminal case against the fair trial requirements, the Court does not at all appear to take into consideration whether the claimant is an individual or a legal person. In, for instance, the case of *Fortum Oil and Gas Oy versus Finland* the Court assumes that Article 6 applies to criminally charged legal persons in the same way as it does to charged individuals [3]. Interestingly, Fortum Oil and Gas Oy is a multinational company specializing, *inter alia*, in the wholesale of petrochemical products. So the fair trial requirement might equally apply to natural persons, one-person private organizations and multinational corporations. From the European Convention's case law it is indeed clear that legal persons enjoy wide protection against the criminal justice system under the right to a fair trial.

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CONSIDERATION OF THE CASE UNDER THE PROCEDURE OF SUMMARY PROCEEDINGS IN THE CONTEXT OF ENSURING THE RIGHT OF A PERSON TO FAIR TRIAL

The research is devoted to hearing of cases under the procedure of summary proceedings as one of the main procedural forms. It indicates justifiability of application and compliance of such a form with the requirements of Art. 6 of the European Convention on the right of a person to fair trial only subject to a number of requirements.

Key words*: summary proceedings, court hearing, right to a fair trial.*

In the wording of October 3, 2017, the Civil Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine) introduced the possibility of hearing certain categories of cases (minor cases, cases arising from labor relations, cases of minor complexity and other cases in which priority is given to an expeditious judgment delivery) in the form of summary proceedings.

The list of cases in which hearing under rules of summary proceedings is impossible (cases arising out of family relations, except for disputes regarding recovering of alimony and division of property of spouses; relating to inheritance, relating to the privatization of the state housing facilities; the recognition assets' possession as unjustified and their reclamation; cases relating to the price of claim more than five hundred subsistence minimum amounts for able-bodied persons) has also been established.

The discussion on the expediency of simplifying litigation procedures continued for a long time: Recommendation № R (81) 7 of the Committee of